THE STATE OF SOUTH CAROLINA
In The Court Of Appeals

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SC Court of Appeals

Appeal from Berkeley County
Court of Common Pleas
Kristi F. Curtis, Circuit Court Judge

Case No. 2018-CP-08-00266
Case No. 2018-CP-08-01008
Appellate Tracking No.: 2019-001169

Aracelis Santos, ……Appellant,

vs.

Harris Investment Holdings, L.L.C., ……..…….. Respondent,

RECORD ON APPEAL
VOLUME 2 OF 3

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so -- spell that first name for me.

THE WITNESS: A-R-E-L-I-S.

THE COURT: All right. Your witness.

DIRECT EXAMINATION

BY MR. GOLDSTEIN:

Q. Do you want me to call you Arelis or Ms. Santos?

A. Ms. Santos.

Q. Ms. Santos, you know you're under oath? (Inaudible).

THE COURT: You both need to talk a little louder because -- you both need to talk a little louder because we have to pick it up. Thank you.

BY MR. GOLDSTEIN:

Q. You know you have to tell the truth?

A. Yes.

Q. Which one of you is younger; you or your sister?

A. My sister.

Q. Okay. Um, are you the tenant at 5901 Loftis Road?

A. No.

Q. Okay. Is the tenant your business?

A. My business.

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Q. Okay. But I guess, who is -- who occupies 5901 Loftis?

A. Latino Mix and El Alamo.

Q. Okay. And do you remember when you first entered into a lease?

A. That's not me. That's my sister.

Q. Okay. Let me show you what has been marked as Defendant's Exhibit 1.

A. This is the contract.

Q. Okay. Do you remember when you first started the business, you and your sister?

A. I don't remember the exact date, but it was six months after El Alamo opened its doors.

Q. Okay. And did you or did your sister deal with Ms. Martinez?

A. My sister directly. But I was there for several meetings.

Q. Okay. Is Defendant's Exhibit 1 the original lease?

A. Yes.

Q. Okay. Then can you explain how Defendant's Exhibit 1 turned into Defendant's Exhibits 2 and 3, what the relationship was?

A. When this one expired, we had to send a letter asking for another two years. I, myself,

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left it in Ms. Martinez's office. And we sent another letter to Harris Investments. Then we spoke with Isabelle Martinez for the second contract. And the second contract, I don't remember, but it was just a tiny bit more, like a dollar more than the first one. And this contract was going to end exactly on the same date as the one at El Alamo.

Q. Have you paid all the rent?

A. Yes. I have all of the rent paid now.

Q. Was some of the rent paid late?

A. Yes.

Q. Why was the rent paid late?

A. The rents have been late since February of this year. And that's when the problems with the police started, and they were trying to tell us we needed to leave that building, and the police kept coming. And so the clients were decreased -- the number of clients decreased.

Q. Who told you that you needed to leave the building?

A. Ms. Isabelle Martinez.

Q. Did she do -- did she tell you that orally or through text messages or through letters or all three?

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A. She sent a text to my sister. My sister forwarded it to me. And she said, Today is the last day for Latino Mix.

Q. Do you want me to ask you questions about those text messages, or do you want me to direct those to your sister?

A. You can ask me too. I might not have it word-for-word, but I have it in my memory.

Q. Do you remember when Mrs. Martinez brought you the two new leases, Exhibits 2 and 3?

A. I don't remember exactly, but she sent an e-mail directly to me, and she said, Here is the contract for Latino Mix.

Q. Okay. I'll show you what is already in evidence as Plaintiff's Exhibit 5. Have you seen that, ma'am?

A. Yes. It's an e-mail from Isabelle Martinez's account to my account, an e-mail.

Q. And since it's already in evidence, would you ask her to look at the e-mail?

I'm going to publish the e-mail in English. And you translate it to Spanish, and she can tell me if my English translation --

A. Okay.

MR. ABNEY: Hold on one second. I just

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want to make sure we're getting an accurate -- should we have the translator read the e-mail?

THE COURT: That's probably the best --

MR. ABNEY: I can't rely --

THE INTERPRETER: (Inaudible.)

THE COURT: That's necessary.

THE INTERPRETER: It says --

THE COURT: I don't have that exhibit, so --

THE INTERPRETER: It says "sent" -- well, this is in English, Sent from Isabelle Martinez, Latino Mix lease renewal.

MR. GOLDSTEIN: Plaintiff's Exhibit 5.

THE COURT: Thank you.

THE INTERPRETER: And then it says, Isabelle Martinez has sent her a document from zipFormPlus. And then in Spanish, Aracelis: Here is the new contract for Latino Mix. I need the address of Aracelis, her home address. Thank you, Isabelle Martinez, The Boulevard Company.

BY MR. GOLDSTEIN:

Q. Did that e-mail have attached to it the new lease?

A. Yes.

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MR. ABNEY: I'm sorry. What did you say the date was on that e-mail?

THE INTERPRETER: December 1st, 2016. No. She's saying the December 1st, 2016, is the date I sent it -- an e-mail. Hers is 6th of August 2016.

(Inaudible.)

BY MR. GOLDSTEIN:

Q. Did you think that you were getting a new lease, or did you think you were getting an extension of the original lease?

A. It was always talked about that it was a new contract.

Q. Okay. Did you pay rent under the, quote, new contract?

A. Yes.

Q. Did you fulfill all the terms of the, quote, new contract?

A. Yes.

Q. Okay. When did Ms. Martinez start to say you need to get out?

A. In the month of November, I think, I'm not exactly sure, when she said we had to leave.

Q. Okay. And did she send you text messages about that?

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A. Yes.

Q. Okay. And do you have the text messages in front of you? I think Exhibit 4.

MR. GOLDSTEIN: May I approach, your Honor?

BY MR. GOLDSTEIN:

Q. One page? Exhibit 4. Is it easier for you if I ask you about the translations or if I ask you about the original text messages? Which is easier for you?

A. Original.

Q. Okay. In that case, I'm going to take Exhibit 4 and I'm going to turn to page -- I'm going to turn to page 6. And starting with page 6 on Defendant's Exhibit 4, can you just walk us through those text messages and tell us what they were about?

MR. ABNEY: Wait. Can we have the interpreter read them? I don't know what they say.

THE COURT: Do you not have a copy of them?

MR. ABNEY: I don't read Spanish.

THE COURT: I don't have them either.

THE INTERPRETER: Do you want me to

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translate that page?

THE COURT: Please do.

MR. GOLDSTEIN: Before we start, Judge, what I did was I put the English translation on top followed by the originals.

THE COURT: That's in the notebook or is that --

MR. GOLDSTEIN: That's Plaintiff's Exhibit -- Defendant's Exhibit --

THE COURT: Do you have that?

MR. ABNEY: I have that. I'm sorry. Had I known that's what this was, I would not have stipulated to it being admitted. I would just like to know what it says and have it be translated.

THE COURT: And that's fine. Do you have an extra copy that I can read?

MR. GOLDSTEIN: Yes, sir. I'll hand it to you right now.

THE COURT: I just want to see if they're the same -- I'm sure -- that's kind of where we are. All right. Do you need these?

MR. GOLDSTEIN: No. I'll get them back from you. Otherwise, there will be two sets in evidence. But I'll let you hold those

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until the examination is over.

THE COURT: Okay. Go ahead.

MR. GOLDSTEIN: So I think, Ms. Hernandez, we're going to let you read the Spanish --

THE INTERPRETER: Spanish to English.

MR. GOLDSTEIN: And then you're going to --

THE INTERPRETER: Your Honor, the interpreter would just add that there's a couple of typos, but I can figure out what it means -- just like typos in text.

THE COURT: Tell us what the typos are.

THE INTERPRETER: Okay. Well, it's Spanish.

Senora, where is the contract signed by the owner? He doesn't want you to be there to sell alcohol for El Alamo.

Okay. At what time tomorrow do you need the keys?

That one says November the 30th, that part. The next part says December 1st.

The owner doesn't want to sign the new contract --

This is from Isabelle.

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-- that's why you don't have it.

That's everything on that page.

MR. GOLDSTEIN: No. There's more pages.

THE INTERPRETER: Okay. You want me to continue?

MR. GOLDSTEIN: Yes, ma'am, please.

THE INTERPRETER: I already told you -- this is -- I'm sorry. On November 30th from Isabelle: I already told you that the owner is not going to sign the contract. I am the agent. I'm going to rent the space out. If I have to call the police, I will. And if you don't leave, we will apply for an eviction. It's not my fault. I am not the owner. I gave you 32 days notice by text and by phone. We'll see you tomorrow or should we apply to evict you? Let me know.

Okay. So this is from Aracelis: Send me the eviction. This is illegal. I have proof that I signed the contract. I need -- just a moment. Everything should be done in the correct way, and the correct way is a written notification from the company.

This is again from Aracelis on the 31st of October: Good afternoon, Isabelle. If you

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have time to talk today, it doesn't matter if it's tonight.

Again, from Aracelis: Hello, Isabelle. Please when you have time, call me, please.

That was part in Spanish and part in English.

This is from Isabelle: Aracelis, today is the last day that Latino Mix can be open. Tomorrow in the morning I'll need the keys, and I'm going to put a sign in the window. Can --

Um, there's a lot of typos here. Just a moment. I'll just do a "sic" for one word.

Can you meet with me tomorrow at 10? Please let me know. Thank you.

And this doesn't say it, but it must be Aracelis: Hello, Isabelle. The truth is I haven't gotten any official notice from the company explaining why they want the building, and I also have not had an order for eviction. I have not received anything of what you referred to.

October 29th from Isabelle: Aracelis, this is what I told you, but --

I have to read ahead a little bit for it

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to make sense. Hold on a moment. There's a lot of typos. Here it goes.

Aracelis, this is what I said, but the truth is that in a contract signed by a person, it's an offer -- "sic" -- signed and accepted as a contract.

It's kind of not very clear.

Do you remember that one part was not signed? That's why I didn't send it and -- well, back that you signed it, I sent it, and he didn't sign it. That --

Um, it says "Davis." I don't know if that's a typo. Is there a person named Davis involved?

(Inaudible.)

THE INTERPRETER: Okay. It looks like a proper name, but it's not.

And the reason of all these problems is that -- that is the reason of all the problems you've had, 191 persons in one place that legally can only have 99 persons. The police sued for 200,000. And if El Alamo is, um, not closed, there are several reasons. I told Benjamin, but he got aggressive with me. I have to rent those two spaces. It's my job.

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I can't help you.

This is from Aracelis: Okay. But I signed the contract for the store. Call me Monday to talk.

October 29th: The owner is not going to sign another contract for Latino Mix. The last day is November 30. This is just a notification. I am going to rent the space. If you want to talk, call me.

And it doesn't say here, but I think this is Aracelis: Can I know why? I don't understand. I said I'll sign the contract of El Alamo. Remember that -- you told me there was another page to sign.

August 6th -- that was the beginning page, I think.

MR. GOLDSTEIN: (Inaudible.)

BY MR. GOLDSTEIN:

Q. Did Isabelle Martinez prepare and deliver these two contracts, Defendant's Exhibit 2 and Defendant's Exhibit 3, to you?

A. Isabelle Martinez, yes.

Q. Did you sign them?

A. My sister signed them.

Q. Did you pay, you and your sister -- I'll

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say the business -- did the business pay the rent as called for under those contracts?

A. Yes.

Q. Did you fulfill all the terms of those contracts?

A. Yes.

Q. When Ms. Martinez told you that you had to get out, did that hurt your business?

MR. ABNEY: Objection. Relevance. There's no counterclaim.

THE COURT: I overrule.

MR. GOLDSTEIN: I'm going to tie it up with the next question.

(Inaudible.)

THE COURT: I mean, I'll allow a little bit of it if you can tie it up.

BY MR. GOLDSTEIN:

Q. Did you have difficulty paying the rent on time?

A. Yes.

Q. Why?

A. Because Mrs. Isabelle Martinez was commenting around the Hispanic community that those two places -- those two locations were going to become available. And so our clients would

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tell us, But they're already renting the space out -- they're getting ready to rent this space out.

Q. Did Ms. Martinez or anyone from Harris Investment Company tell you that they needed that building for other purposes?

A. Mrs. Isabelle Martinez.

Q. What did she tell you?

A. She said that the owner did not want us there anymore, and they needed the space, and the owner did not want us there anymore because of selling alcohol to El Alamo. And because El Alamo had 191 people.

Q. Is that true?

A. No.

Q. Do you know where that number 191 comes from?

A. I heard one policeman ask Carol (ph) -- one policeman asked another policeman, How many people do you think are there? And he said, I would guess 190.

Q. Have you been arrested?

A. Yes.

Q. I'll show you what is already in evidence, Defendant's Exhibit 6. When did the police become -- start becoming involved with El

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Alamo and Latino Mix?

A. August 20th, 2016.

Q. And how does that timeline of the beginning of police involvement coincide with the efforts of Ms. Martinez to get the building back?

A. Until that day that they came and they said there were 190 people there, we'd never had any problem; everything was fine.

Q. Did the police ever take you to jail?

A. Yes.

Q. Which police officer did that?

A. I don't remember his name, but it's the one who was -- he was arrested for domestic violence. It's Dodd -- I don't know the name. Dodd?

Q. What were -- what did the police charge you with?

A. Later I saw the tickets, but he just told me to turn around, and he said, You're under arrest until the next day. That's when I knew that I had 15 tickets from the fire department. And he gave me a ticket for consuming alcohol after hours. And I explained several times that I wasn't the manager.

Q. Have you ever been convicted of a crime?

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A. Once I had a DUI and I pled guilty.

Q. Okay. My question wasn't very artful. Let me -- have you ever been convicted of a crime or anything arising out of El Alamo or Latino Mix?

A. No.

Q. Are you currently in the process of becoming an American citizen?

A. Yes.

Q. When do you expect to take the oath of citizenship?

A. Within the next three months.

Q. During this entire dispute, has anyone from Harris Investment Company reached out to you to discuss concerns or problems with the operation?

A. No.

Q. Does El Alamo have a full-service kitchen?

A. Yes.

Q. How many lunches does El Alamo sell on an average day?

A. More than 250.

Q. Does El Alamo also support a mobile taco truck?

A. Yes.

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Q. Is that food prepared in El Alamo?
A. Yes.
Q. When El Alamo is open late at night or early in the morning, does it serve food?
A. Yes.
Q. The original lease describes El Alamo as a discotheque.
A. Yes.
Q. What is a discotheque?
A. A place where you can eat, drink, dance.
Q. Does El Alamo provide food to eat?
A. Yes.
Q. Does El Alamo provide drink that can be consumed there -- nonalcoholic drink?
A. Yes.
Q. Does El Alamo allow customers to bring in alcohol?
A. Yes.
Q. Does El Alamo allow people to dance?
A. Yes.
Q. So is that what you would call a discotheque?
A. Yes.
Q. Okay. Now, Latino Mix, can you tell us about the inventory in Latino Mix?

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A. Cokes, Pepsi, beans, rice, sugar, chips, juices, candies, spices used in food preparation, sausages, beer, water.

Q. That's enough. Does it offer a full array of items for sale?

A. Yes.

Q. Now, has it been open less hours recently than when it first started?

A. Yes. We've really had a reduction in our clientele.

Q. And why did that happen?

A. There was a rumor out there that the store was closed, and we were the only store there and people just stopped coming.

Q. Do you wish to continue operating there?

A. Yes.

Q. Have you tried to be a good tenant?

A. Yes.

Q. Are you aware of the terms and conditions contained within the leases?

A. Not perfectly, but, yes.

Q. All right. You're aware that you have to pay rent?

A. Yes.

Q. You're aware that you have to maintain

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insurance?

A. Yes.

Q. You're aware that you cannot conduct any unlawful activity?

A. Yes.

Q. The business license that is held in the name of whom?

A. Latino Mix and Aracelis Santos.

Q. And how about El Alamo?

A. My, uh, significant other, Benjamin Reyna.

Q. Okay. And what is your relationship with Benjamin Reyna?

A. We are a couple.

Q. When you originally signed the lease, did -- well, let me start over. Who brought you the original lease?

A. Isabelle Martinez.

Q. Did Ms. Martinez know that you and Benjamin Reyna were a couple?

MR. ABNEY: Objection. It calls for speculation.

THE COURT: I'll sustain it.

BY MR. GOLDSTEIN:

Q. Did you have contact with Isabelle

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Martinez?

A. Yes.

Q. Did Benjamin Reyna have contact with --

A. Yes.

Q. Did the two of you sitting together have contact with Isabelle Martinez?

A. Yes.

Q. Did you attempt to hide your relationship from Isabelle Martinez?

A. No.

Q. Was there any doubt in your mind that Isabelle Martinez represented the landlord?

A. No.

Q. Did you disclose to Ms. Martinez that the business license was in the name of Benjamin Reyna?

A. She knew.

MR. ABNEY: Objection. Move to strike. Speculation.

THE COURT: I sustain the objection. Ask it a different way, because you asked the question correctly, but her answer was speculation. I think that's what the objection was.

BY MR. GOLDSTEIN:

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Q. How did Isabelle Martinez know --

MR. ABNEY: Objection. Speculation.

THE COURT: I sustain it.

MR. GOLDSTEIN: Let me finish the question.

THE COURT: I understand what --

BY MR. GOLDSTEIN:

Q. How did Elizabeth -- how did Isabelle Martinez know that you and Benjamin Reyna were together?

MR. ABNEY: Objection. Speculation.

THE COURT: Sustain the objection. I mean, I guess rephrase it. Just ask her what she told her.

BY MR. GOLDSTEIN:

Q. Did you tell Isabelle Martinez that the business license was held by Benjamin Reyna?

A. No.

Q. Did Benjamin Reyna tell Isabelle Martinez?

MR. ABNEY: Objection. Lack of foundation.

A. Yes.

THE COURT: Did she hear that? Ask her if she heard that.

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BY MR. GOLDSTEIN:

Q. How many times did you and Benjamin Reyna, together, as a couple, meet with Isabelle Martinez?

A. More than ten.

Q. Okay. Would you discuss the operation of the business with Isabelle Martinez?

A. Yes.

Q. During these joint conferences, did Benjamin Reyna disclose that the business license was in his name?

A. Yes.

Q. Is there anything in the lease -- as far as you know -- is there anything in the lease, as far as you know, that prohibits the business license from being held by your significant other?

A. No.

Q. Are you aware of any crimes that have occurred at El Alamo or Latino Mix?

A. No.

Q. Do you maintain surveillance cameras at El Alamo?

A. Yes.

Q. When the police would come out, did you disclose to them that you had surveillance

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cameras?

A. Yes.

Q. And what happened when you would furnish this information?

A. They weren't interested in seeing it; they weren't interested in knowing about it.

Q. Have you been treated fairly by Harris Investment Company?

A. I think so.

Q. Has the City of Hanahan treated you fairly?

A. No.

Q. Why not -- I mean, in what way have they not treated you fairly?

A. I think they've treated us differently at El Alamo. First, they suspended the license. Then they passed an ordinance, part A and part B. It wasn't --

THE INTERPRETER: I need a clarification.

A. It didn't apply to El Alamo. Then they put a part C in, which did apply to El Alamo. We appealed that decision about the license. And they would continually go and shut us down because we didn't have a license. I don't see other clubs

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with four or five police cars parked in front; just ours.

So if we take somebody -- ask somebody to leave and the police are there -- so if we are asking someone to leave the club, as soon as the police see us escorting them to the door, they come up and they file a report. And I just want my rights to be respected.

Q. Do you allow minors in El Alamo?

A. They have to be 18. They get a mark on them, a seal -- a stamp.

MR. GOLDSTEIN: Thank you. That's all the questions I have. If you would answer any questions from Mr. Abney.

CROSS-EXAMINATION

BY MR. ABNEY:

Q. Ms. Santos, if we could take a look at Exhibit No. 2 and No. 3. And you say you received these leases from Ms. Martinez?

A. Yes.

Q. Would you agree with me that the landlord never executed either of these lease agreements?

A. Neither.

Q. The -- you agree the landlord did not

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execute --

A. The first El Alamo contract was not signed by the owner. But we've been there for two years. And then we had the Latino Mix one, the same situation. I didn't know that the other side needed to sign it. It was the same as the first time.

Q. But you agree with me that for Exhibit No. 2 and Exhibit No. 3, the landlord did not execute these leases?

A. No.

Q. That's going to read funny.

A. They did not.

Q. They did not. Okay. And Ms. Martinez told you the landlord refused to execute the contract, correct?

A. Thirty days before the -- can you ask the question again?

Q. Ms. Martinez told you that the landlord refused to execute Exhibits 2 and 3, correct?

A. Because the El Alamo was already signed.

Q. Oh, I see. And when you say just Latino Mix, you're referring to Exhibit No. 3, correct?

A. Yes.

Q. And Ms. Martinez told you the landlord

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refused to execute Exhibit No. 3?

A. Thirty days before the contract was up.

Q. But the answer is, yes, she told you --

A. Yes.

Q. Thank you. I believe you said you agree that you have to comply with local law as a term of the lease agreements, correct?

A. Yes.

Q. So if you exceed the occupancy limit, that is a breach of the lease, correct?

A. Yes.

Q. And if you allow after-hours consumption of alcohol in violation of a town ordinance, that's a breach of the lease, correct?

A. But it was already established before that ordinance was passed.

Q. Okay. But if you -- what do you mean? What was established?

THE INTERPRETER: She's asking for the question to be repeated again.

BY MR. ABNEY:

Q. If you permit after-hours consumption of alcohol, that is a violation of the lease, correct?

A. I can't say what it says specifically,

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but I suppose so.

Q. Now, I heard that you and Mr. Reyna are significant others.

A. Yes.

Q. Are you legally married?

A. No.

Q. Have you ever been legally married?

A. No.

Q. How long have you been significant others?

A. Five years.

Q. Have you been significant others consistently through that time?

A. Yes.

Q. Do you live together?

A. Yes.

Q. And have you lived together throughout that period?

A. Yes. We've been together except when he is traveling.

Q. Let's talk about the luncheons. Do you actually serve 250 sit-down lunches in the restaurant a day?

A. We prepare 250, or more than 200 lunches, but to be sold on construction sites.

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Q. I see. So the lunches that you prepare in El Alamo go out to other locations?

A. Yes.

Q. So you don't actually have sit-down service in El Alamo?

A. Yes.

Q. And do you serve -- you don't serve breakfast?

THE INTERPRETER: Interpreter wants a clarification on the last one. I'm not sure if she answered, yes, we do not or -- can we --

MR. ABNEY: Sure.

THE COURT: Do you have sit-down service?

BY MR. ABNEY:

Q. Exactly. Do you have sit-down service for lunch at El Alamo?

A. Yes.

Q. And how many people do you serve in El Alamo for lunch in a day?

A. At lunchtime?

Q. Yes.

A. I don't really know exactly. Because I'm the one serving; it's not many.

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Q. Do you have a separate business license for the lunches that you deliver off site?

A. Yes. We have to have a license for the different parts of the city, like North Charleston or downtown, to sell food in the construction sites.

Q. Do you serve sit-down dinner in El Alamo?

A. No.

Q. And, Ms. Santos, you agree you missed rent payments for both El Alamo and Latino Mix?

A. Yes.

Q. And you missed payments on multiple occasions for both El Alamo and Latino Mix, correct?

A. Yes.

Q. Would you agree with me that it's important for a landlord to receive timely payment of rent?

A. Yes.

MR. ABNEY: That's all I have. Thank you.

THE COURT: Anything further?

MR. GOLDSTEIN: Just a few, Judge, not much.

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REDIRECT EXAMINATION

BY MR. GOLDSTEIN:

Q. Mr. Abney was asking you if you -- if the landlord refused to sign the leases. Do you remember those questions?

A. Yes.

Q. Um, you were asking Ms. Martinez to give you a copy of the signed lease?

A. Several times.

Q. And her response was the landlord was not going to sign?

A. No.

Q. Okay. Let me start over again. What did she tell you about whether the landlord would or would not sign?

A. So Mrs. Martinez just told me what the terms of the lease were going to be and that she was going to send it to the owner.

Q. Thank you. Could you examine the signature page of Plaintiff's Exhibit 2, please?

A. Yes.

Q. And whose signature appears on that lease?

A. One is my sister's, Aracelis Santos; and the other is Isabelle Martinez.

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Q. And is there also a signature on behalf of the landlord?

A. No.

Q. Let me direct your attention to this line right here. Is that the signature of the landlord?

A. Yes.

Q. So to sum up, there are three documents; is that correct?

MR. ABNEY: Objection.

THE COURT: Rephrase it.

BY MR. GOLDSTEIN:

Q. You signed an original lease back in 2014, correct?

A. A contract was signed in 2014.

Q. That's the one on the long paper?

A. Yes.

Q. Everybody signed that?

A. Yes.

MR. ABNEY: Are you referring to an exhibit? Sorry.

MR. GOLDSTEIN: Defendant's Exhibit -- actually, we both put it in. It's my Defendant's Exhibit 1, the lease dated May 22nd --

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A. Yes.
Q. That lease contained a renewal provision?
A. Yes.
Q. Did you exercise the renewal?
A. Yes.
Q. Is -- as -- after you exercised the renewal, did Ms. Martinez then hand you two new leases?
A. For Latino Mix store.
Q. Got it.
A. Okay.
Q. Have you been paying rent on both Latino Mix and El Alamo, as called for in the leases?
A. Yes.
Q. As you sit here today, are you current on all rent on Latino Mix and on El Alamo?
A. Yes.
THE INTERPRETER: Excuse me.
Q. Um, have you and your sister and Benjamin put a lot of work into El Alamo and Latino Mix?
A. Work, effort and all of our savings.
Q. If you were put out, what would be the financial result of that to you?

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MR. ABNEY: Object to the form.

THE COURT: I don't think it's all that material to -- whether or not it's a material breach is, you know -- I think that's one of the factors in Kiriakides.

MR. GOLDSTEIN: I always say "Kiriakides."

THE COURT: That is -- yeah, I don't know. Go ahead.

BY MR. GOLDSTEIN:

Q. If you were put out, what would be the financial effect of that to you and Benjamin and your sister?

A. We would have no money to pay rent. For our children, we are both single moms. My daughter is going to start college next year. I don't have any money except what comes from this.

Q. Um, did the -- did the dispute with Ms. Martinez and the police involvement and the ordinance amendment -- did that all occur around the same time?

THE INTERPRETER: The third one was the license?

Q. The problem with Ms. Martinez, the amendment of the ordinance and the police visits?

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A. Yes.

Q. Did you have any problems with the town or with the landlord in 2014?

A. No.

Q. In 2015?

A. No.

Q. And your first problems were in 2016?

A. Yes.

Q. What percent of your clientele is Hispanic?

A. 98 percent.

MR. GOLDSTEIN: Thank you. That's all I have.

MR. ABNEY: Nothing further, your Honor.

THE COURT: You may step down, ma'am.

All right. Your next witness?

MR. GOLDSTEIN: Your Honor, if you will permit me a three-minute recess, I would like to determine that I need the interpreter.

THE COURT: Okay.

MR. GOLDSTEIN: If all my other evidence is simply going to be cumulative, in which case I would be prepared to rest, but I need the interpreter to make that inquiry.

THE COURT: Okay. That's fine.

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MR. GOLDSTEIN: Thank you, Judge.

(A recess was taken.)

MR. GOLDSTEIN: Because it turns out that when I handed the text messages to the interpreter, I handed her the pages out of order, which kind of got us out of the sequence. So we've agreed that she's just going to read the text messages again in correct order.

THE COURT: That's fine. I knew it was out of sequence. I was trying to jump around. I figured it out at the time myself.

MR. GOLDSTEIN: I should have put a staple in them.

THE COURT: That's fine. Okay.

MR. GOLDSTEIN: So, your Honor, with that, I'm going to ask Ms. Hernandez if she can -- (inaudible) -- Defendant's Exhibit 4, and I'm going to put a staple in it. And so she can --

THE INTERPRETER: Start -- (inaudible).

MR. GOLDSTEIN: Correct.

THE INTERPRETER: Ready?

MR. GOLDSTEIN: Do you want her near a microphone?

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THE COURT: Yeah, that's probably the best thing. Connie is going to be writing this down, I think. I take good notes and I'm -- you know, I rely on hers as well. But --

MR. GOLDSTEIN: Ms. Hernandez, if you could just translate for us Defendant's Exhibit 4.

THE INTERPRETER: Okay. September 22nd: Aracelis, when you signed the lease, you forgot to sign on the bottom. Can you sign it today?

This is from Isabelle. Sorry.

From Aracelis: Yes, I can leave it at El Alamo with Senora Alicia, who is there.

From Isabelle --

MR. GOLDSTEIN: Judge, do you want me to shut that door?

THE COURT: Yeah, if you don't mind. Thank you.

You can continue.

THE INTERPRETER: This is a big typo.

Yes, I will get it there later.

Aracelis: Okay.

Aracelis: Thank you.

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October 29th: The owner is not going to sign another contract for Latino Mix. The last day is November 30. This -- this is just a notification. I'm going to rent the space -- that space out. If you want to talk, call me.

Aracelis: Can I know why? I don't understand.

Isabelle (sic): I signed the contract of El Alamo. Remember that you told me that there was one more page to be signed.

From Aracelis: Okay, but I signed the contract of the store. Call me Monday to talk.

The 30th of November, from Isabelle: I told you that the owner is not going to sign the contract. I am the agent. I am going to rent the space out. If I have to call the police out, I will. And if you don't leave, we will have to apply for eviction. This is not my fault. I am not the owner. I gave you 32 days' notice by text and by telephone. So we'll see you tomorrow or should we apply for an eviction? Let me know.

From Aracelis: Send me the eviction.

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This is illegal. I have proof that I signed the contract. I need this to be carried out in a fair way, and the fair way -- or the correct way is a written notification from the company.

From Isabelle, October 29th: Aracelis, this is what I said -- this is what I said, but the truth is that if this contract is signed by a person, it's an offer. Signed and accepted is a contract. You remember that one part was not signed? That's why I didn't send it, and a while back you signed it. When you signed it, I sent it, but he didn't sign it. It seems that it's because of all the problems you had. 191 persons in a place which legally only is supposed to have 99 persons. The police filed a suit of -- worth $200,000. So if El Alamo is terminated, El Alamo Cafe is terminated, there are several reasons. I told Benjamin, but he got aggressive with me. I have to rent out those spaces. It is my work; it is my job. I can't help you.

Aracelis, October 31st: Good afternoon, Isabelle. If you have time to talk today, it doesn't matter if it's tonight.

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November 1st from Aracelis: Hello, Isabelle. Please, when you have time, will you call me?

November 30th, Isabelle: Aracelis, today is the last day that Latino Mix can be open. Tomorrow morning I need the keys, and I'm going to put a sign in the window. Can you meet with me tomorrow at 10? Let me know, please. Thank you.

It doesn't say, but I think this is from Aracelis.

Good morning, Isabelle. The truth is I have not gotten any official notice from the company explaining why the building -- why he wants the building back, and I also have no eviction order. I have not received anything more from -- of what you talked about.

November 30th from Isabelle: Senora, where is the contract signed by the owner? He doesn't want you there selling alcohol for El Alamo. That's it. What time tomorrow? I need the keys.

December 1: The owner doesn't want to sign the contract -- the new contract -- from Isabelle -- that's why you don't have it.

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THE COURT: All right. Anything further?

MR. GOLDSTEIN: Well, I was -- I was gonna release Ms. Santos because I think she has young children she needs to pick up. Is that correct? Would you ask her if she needs to pick up her -- (inaudible).

I was going to call Benjamin Reyna.

THE COURT: All right. Raise your right hand for me, sir.

BENJAMIN REYNA, SWORN.

THE COURT: Okay. All right. And we don't have any -- we don't have any -- he understands what I'm saying and he can speak English?

MR. GOLDSTEIN: His English is better than mine.

THE COURT: All right. Good. (Inaudible) -- based on his response, but let's go ahead. Your witness.

MR. GOLDSTEIN: It won't be long, Judge.

DIRECT EXAMINATION

BY MR. GOLDSTEIN:

Q. You're Benjamin Reyna?

A. Yes.

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Q. And your significant other is --
A. Arelis -- Arelis Santos.
Q. And these are two sisters?
A. Yes.
Q. And only one letter separates their name?
A. Uh-huh, yes.
Q. And you are familiar with the operation of El Alamo and Latino Mix?
A. Yes.
Q. Um, when did you first open El Alamo and Latino Mix?
A. I opened El Alamo back in April 2014.
Q. Okay.
A. And Latino Mix, it was opened by Aracelis and Arelis in October of 2014.
Q. All right. And did you have any troubles with anyone at your business in 2014?
A. I don't have any problems with anyone. What I have problems with is the city to open. They give me a lot of hassle to open -- for the business license. And we did everything the way they wanted, and we were working on that place for six months, and Isabelle Martinez was working with me to get a license together.

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Q. Okay. And you're currently open?
A. Yes.
Q. You paid the rent late?
A. Yes. Well, from December -- before -- before -- before -- January 2017, when that happened with the rent, we paid the rent on time and everything. And when we got married (ph) in 2017, we started having problems paying the rent on time.
Q. Why did you start having problems?
A. Because of the police harassing with us.
Q. When did that start?
A. That started August 20th of 2016.
Q. When did the problems with the landlord start?
A. The problems with the landlord started in October of 2017 -- I mean, 2016. I'm sorry.
Q. And the ordinance in Hanahan was amended when?
A. The ordinance of Hanahan was amended on June of 2016, and it was amended, and they put in section A and in section C -- section A and section B, which it was clear a business license to sell alcohol is not allowed to open after 2:00 in the morning. Now, we -- it came to my

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attention, and I -- at the same time I said, Look, this is -- it's very clear, it says business license to sell. And we don't hold a license. We have a BYOB club, which is bring your own beer, and that's why it doesn't apply to us.

A month after that, they went back and they have another meeting with the city -- the city council, and they put in section C, which states any business -- any business which allow the consumption of alcohol, it cannot be allowed to open between the hours of 2 and 6 in the morning, okay, at which time I say -- at which time, I contact my lawyer so we can appeal for that.

MR. ABNEY: Your Honor, I'm going to object to the relevancy of all of this. I mean, I think a lot of it is cumulative, but the history of the enactment of that license is not relevant to the eviction dispute.

THE COURT: Mr. Goldstein?

MR. GOLDSTEIN: I think it's very relevant. It shows the Court -- (inaudible).

THE COURT: I mean, I'm going to allow it. I mean, what weight I'll give to it, I'll let -- you know, I'll decide that. But I

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think it's somewhat relevant.

BY MR. GOLDSTEIN:

Q. Is all your rent currently paid?

A. Right now, the only thing that we have is late fees that we're gonna -- we're gonna -- come to our attention, how much we owe or how much we're behind on late fees.

Q. Is the business currently insured?

A. Right now, we hold insurance, because they send me a letter that they wanted 3 million. And I talked to my insurance agent, and they said it was very -- (inaudible). They wasn't -- (inaudible); there's somebody else for that kind of insurance. And they say, Well, when you clarify this, we can put insurance on whatever you want.

Q. Is there any crimes that have been committed in El Alamo?

A. Inside El Alamo we have -- we haven't had any crimes. Whatever happened outside of the El Alamo in the parking space, parking lots, it can -- I mean, we have no control over that.

Q. Have you been cooperative with the police?

A. I've been very cooperative with the

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police. In fact, they have a case last year which somebody stole a car from another neighborhood business, and I allowed them to see -- to see the videos on my cameras. And we -- they actually arrest that particular person. I mean, every time the police officer asks me for the videos -- for surveillance videos, I have no problem with that.

Q. Um, are you currently, uh -- do you currently have an operating heating and air-conditioning unit?

A. I do not. But last year, around this time, after the -- after the -- (inaudible) -- of last year, somebody stole my air-conditioning and my heaters from the back of the building. I called the police and I make a report. I called -- I called the gentleman -- the manager, and I offered -- I tell him, Look, we need to have this inside; there was a -- (inaudible). And we haven't -- somebody went and see. And he said he already turned it in to the company. Because I asked him a few times, when can they put the air-conditioner? And he just tell me, Well, I turned it in and they haven't -- they don't want to do it because they haven't done it. Um, on that page, my -- my business suffered in the

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summer because we don't have AC on our location.

Q. Whose responsibility is it to maintain the air-conditioning, according to the lease?

A. According to the lease, the landlord is responsible for -- to maintain AC and air-condition; and the roof -- and another thing that we have on the roof, the roof is leaking, and we have repaired it a few times because it's leaking right now.

Q. Ms. Martinez, is she -- do you know what she is?

A. Um, well, I deal with Ms. Martinez since 2014, because she was the agent for the previous owner, the previous landlord. And when she -- when the previous landlord sell to Harris, she continued to be the agent. And I deal with her since 2014.

Q. Did you attempt to exercise your renewal under the original 2014 lease?

A. I did, in 2000-and- -- well, the renewal, it was -- they said we need to send a letter, a notice 90 days before that, and we sent a certified letter back in January of 2016. And we sent it to a company, the address that we have, and then we sent -- we give it to Ms. Martinez,

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another letter, the same letter at the same time.

Q. In response to your intent to renew --

A. The intent to renew, we contact Ms. Martinez, and we said we'd send a letter; we intend to renew the lease. And she said, You -- (inaudible); this is the term for the new lease; I want to send you an e-mail, which she sent an e-mail to Arelis' e-mail. We discussed it at the store; we talked to her. And she say we want to come -- the agreement was the lease -- the store's lease is going to end at the same time the El Alamo lease was going to end, 2018. And we wanted the same thing -- the same condition we had at El Alamo.

Now, the 2000- -- when we agreed -- Ms. Martinez say we have a problem; I talked to Arelis; she says there's no problem. That was before we have all the problems with the Hanahan, before Hanahan contact the landlords. And she said, I talked to Eric, which is the CFO I guess of the company, and everything is in agreement; we just have to sign this. And just return -- (inaudible) -- sign it; and I pick it up, and then I can send it so they can sign it.

Q. Did she sign it?

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A. Aracelis signed it. And then -- well, Ms. Martinez send Aracelis one of the texts -- I'm sorry, the texts that they all mixed up -- back on 22 of September, she sent Aracelis a text, Aracelis, could you sign the lease? You're missing a page; you're missing one lease (sic) on the bottom. Can you -- can we meet so we can sign it?

MR. ABNEY: Your Honor, this is testifying to conversations other people had that Mrs. Santos has already --

THE COURT: I'll sustain the objection. I mean, unless he was sitting there, listening in on both sides of the conversation --

THE WITNESS: I saw the texts.

THE COURT: -- it's hard for him to know.

BY MR. GOLDSTEIN:

Q. Well, were you involved in negotiations with --

A. I was involved in negotiations with Ms. Martinez.

Q. In person?

A. In person, uh-huh.

Q. Do you think you've been treated fairly

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in this case?

A. No.

Q. What would happen if you were put out?

A. What would happen, I have this business -- I put this business together for many years. And when I finally -- because in 2014 is when I signed the lease for El Alamo. And at the beginning of 2014, I went through seven months of hell from Hanahan to get the city -- the business license. It was very well documented. They gave me a lot of problems to get the business license and I went six months -- six or seven months in order to get everything the way they wanted.

Q. Do you think you've been singled out because you're Hispanic and your clientele?

A. I have no doubts -- I have no doubts I've been singled out by Chief Turner and by the City of Hanahan. Okay -- go ahead.

Q. Do you know if the city put any pressure on the landlord to get rid of you?

A. Okay.

MR. ABNEY: Objection. Speculation.

THE COURT: I sustain the objection. I mean, that would be -- that would be his conclusion opinion more so than anything else.

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That's not speculation. It's just his opinion.

BY MR. GOLDSTEIN:

Q. Did the landlord's agent send a text alluding to the landlord being sued by the city?

MR. ABNEY: Objection.

A. The landlord --

THE COURT: I sustain the objection. I think you've already got that in.

A. Can I explain something? The landlord's agent --

MR. ABNEY: The objection was sustained.

THE COURT: Yeah, I sustained it. Move on.

BY MR. GOLDSTEIN:

Q. Ms. Martinez talked to you in person?

A. She has talked to me by phone. I was working, and she called me and she tell me exactly -- exactly words that she put in the text to Aracelis. She tell me the reason why they don't want to sign the lease is because the city -- they have an empty lot behind the bar -- behind El Alamo. They have an empty lot that belongs to Harris Investments. They're looking to getting a new building.

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MR. ABNEY: I'm going to move to strike all of this as hearsay.

THE COURT: Any objection to --

MR. GOLDSTEIN: Your Honor -- (inaudible) --

THE COURT: You're saying that -- he's saying that this is what Ms. Martinez told him?

THE WITNESS: Yes.

THE COURT: All right. I mean --

MR. ABNEY: This is the real estate agent; this is not -- and it's not in the scope of negotiating the agreement.

MR. GOLDSTEIN: Well, Mr. DeLuca had testified on Direct that she was their agent.

MR. ABNEY: Mr. DeLuca testified she didn't have any authority to extend this lease.

THE COURT: I mean, I'll -- let me hear what he's got to say, and I'll decide whether or not -- I mean -- whether or not to consider it.

BY MR. GOLDSTEIN:

Q. Who brought you the leases?

A. Ms. Martinez e-mailed it to us.

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MR. ABNEY: Cumulative.

MR. GOLDSTEIN: That's all I have. If you would answer any questions from Mr. Abney.

CROSS-EXAMINATION

BY MR. ABNEY:

Q. Mr. Reyna, how many air-conditioning units are on the premises?

A. How many what?

Q. How many air-conditioning units do you have?

A. Just one, but there's three units there; we lease three units.

Q. Three units?

A. We lease suite 7, suite 5 and suite 6, and each suite is supposed to have a unit.

Q. But two of three --

A. No. Just one.

Q. One works today?

A. Uh-huh. The unit -- well, on the premises, on El Alamo, we have three different units, which is unit No. 5, unit No. 6 and unit No. 7. On the store -- on the Latino Mix, we have unit No. 4 and unit No. 2. Okay? Now, on Latino Mix, it only has one air-conditioner. Unit No. 2 doesn't have air-condition. The previous landlord

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was supposed to put one and it was never put on.

Q. Okay. But at El Alamo, there is a working air-conditioner?

A. Just for unit No. 5.

Q. Thank you.

A. Unit No. 7 and unit No. 6 has no air-conditioners.

Q. Turn to Exhibit No. 2 up there. And this is the --

A. This one?

MR. ABNEY: Where is the witness --

THE WITNESS: This one here?

MR. GOLDSTEIN: Oh, Defendant's?

THE COURT: Right here.

MR. ABNEY: Right here.

MR. GOLDSTEIN: I thought you were getting --

MR. ABNEY: Thank you.

BY MR. ABNEY:

Q. Mr. Reyna, do you read English as well?

A. Yes, as well. I mean, as best I can do.

Q. Sure. Thank you. Can you turn to section No. 23, please.

A. Section No. 23. Mm.

Q. I can direct you.

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MR. ABNEY: May I approach?

A. Section No. 23. Will you show it to me? Okay.

Q. And I'm going to read that, and you can tell me if you believe I've read it correctly. "Effective date of the lease: This agreement shall become effective as a binding agreement only upon the execution and delivery thereof by both landlord and tenant."

A. Uh-huh.

Q. Would you agree with me that Harris Investments is the landlord under Exhibit 2?

A. Uh-huh.

Q. And would you agree with me Harris Investment did not sign this lease?

A. Well, I have one right here -- (inaudible) -- the landlord signed it.

Q. I'm asking you about Exhibit No. 2.

A. This can be okay; it can be a copy.

Q. Is there a signature for Harris Investment Holdings on this document?

A. On this one, no.

Q. And Ms. Martinez told you all that the landlord would not agree to extend that lease, correct?

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A. Well, I think you're missing out, because this is for the -- for the -- for the El Alamo, not for --

Q. Okay. I'm sorry.

A. That's what you're missing. This is El Alamo, not -- not the Latino Mix. I'm sorry. I don't want to be rude.

Q. I'm handing you Defendant's Exhibit No. 3, which is what you all have been referring to as the --

A. Latino.

Q. -- the new lease for Latino Mix, correct?

A. Uh-huh. Uh-huh.

Q. Okay. Would you turn to Exhibit 23 -- I mean, section 23 of this document?

A. Uh-huh.

Q. I'll read, and you tell me if you think I've read it correctly. "Effective date of the lease: This agreement shall become effective as a binding agreement only upon the execution and delivery thereof by both landlord and tenant."

A. Okay.

Q. Do you agree with me --

A. I --

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Q. -- Harris Investment Holdings is the landlord under --

A. Uh-huh.

Q. Do you agree with me that Harris Investment Holdings did not execute Exhibit No. 3?

A. Okay. But Harris --

Q. First answer me yes or no.

A. Yes.

Q. Okay.

A. But Harris Investment Holdings never send a signed lease from -- from El Alamo, which we think -- we were thinking, well, this is the way they do -- they do a shady business. Because we never got a signed lease from El Alamo. So we went on the assumption, because we never have a signed lease from El Alamo and we ask, okay, they don't want to send us a signed lease for Latino Mix.

Q. Take a look at Exhibit No. 2 in the Plaintiff's Exhibit binder.

A. Uh-huh. Right here?

Q. Yes. And, actually, that's the correct --

A. Okay. Now, we went on the --

Q. Just let me ask my question and then you

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can respond. Do you see the signature of the landlord on here?

A. Yes. This is the first time I've seen the signature. And I asked Ms. Martinez on many occasions that we needed to have this contract. And that's why we went under the assumption that since we never got the contract from Ms. Martinez for El Alamo, we want to get the contract from Latino Mix.

Q. Okay. That was your assumption?

A. That was my assumption, yes.

Q. Fair enough.

A. Because we asked Ms. Martinez for -- on many occasions for the signed lease for El Alamo.

Q. Okay.

MR. ABNEY: I think that's all I have, your Honor.

THE COURT: Redirect?

MR. GOLDSTEIN: I don't think so, Judge.

THE COURT: Okay.

MR. GOLDSTEIN: But let me -- no.

THE COURT: All right. All right. You can step down.

Any further witnesses?

MR. GOLDSTEIN: That's the Defendant's

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case, your Honor.

THE COURT: Any, I guess, rebuttal testimony? I assume not?

MR. ABNEY: No, your Honor.

THE COURT: All right. Do you all want to say anything in closing, or do you want to just let me look at all this stuff? I mean, there's a lot of stuff to review as far as, you know, all the documents and everything. Obviously, I think I've got a pretty good grasp on everything. But if you all want to -- I mean, I'm happy to hear from both of you if you want to talk some more, but --

MR. GOLDSTEIN: Under the Rules, I do have to renew my motion --

THE COURT: No. I understand that. And I'll rule the same way, you know. I think in the light most favorable to the Plaintiff, they've presented enough evidence to at least survive the 41(b) motion.

MR. GOLDSTEIN: Thank you, your Honor.

THE COURT: You know, obviously, any other objections are preserved. So --

MR. ABNEY: Your Honor, I mean, I could go through, and it's going to sound a lot like

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my opening and just --

THE COURT: I understand. And I think I know it. I mean, I think there's no -- no reason for you all to keep doing bullet points, I mean, one way or the other. I've got to, you know, weed through this. I mean -- go ahead.

MR. ABNEY: Do you want us -- I mean --

THE COURT: I was about to ask, is that what you all want to do, is do proposed orders and just let me know?

MR. ABNEY: I'd like to do it very quickly, your Honor. You know, we've been at this for a while. We'd like to get moving.

THE COURT: Very quickly is fine. I don't know how long you all are going to need to do proposed orders.

MR. ABNEY: Ten days works for me.

MR. GOLDSTEIN: How much?

MR. ABNEY: Ten days.

MR. GOLDSTEIN: Shoo.

THE COURT: I mean, I'm going to be out next Thursday and Friday no matter what, so --

MR. GOLDSTEIN: Well, I mean, if ten days is it --

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THE COURT: I mean, I'm going to be out those days, so ten days is going to be -- I mean --

MR. GOLDSTEIN: I have two Court of Appeals -- that they're not going to give me another extension on. They're just not; I'm not even going to ask.

THE COURT: Let's -- let's -- I mean, let's do the normal -- I'm going to do the normal 30 days. And, that way, you know, I'll get the proposed orders within 30 days. If I issue an order before that, I will. I mean, I'm planning on working on it. And trust me, I was, you know -- I was drafting an order -- Connie will tell you, you know, it's a long order, you know, for the summary judgment motions, you know. Because, honestly, it did not occur to me -- I guess maybe I just overlooked it in hearing your arguments and things that day and overlooked it, that there were two separate leases, one in one day and one in another. And when I found that out, I mean, it was obviously -- there's -- it's confusing, and there's an ambiguity. Because, quite frankly, as to Latino Mix, you know, it

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did -- now I have other evidence that I didn't have ahead of time to consider, such as this contract issue, because I don't think it was ever presented to me that there was potentially a new contract, but I think that's something new.

Um, so things changed there. But like I said, a lot of my order, I'm not going to have to worry about because all of the history is done; you know, it's just analysis at this point.

MR. ABNEY: Fair enough.

THE COURT: So, really, you all's analysis is going to be much appreciated, unlike my mentor who will kill me for accepting proposed orders. You know, when I worked for Judge Pieper, he did not accept them, nor could I use them as a law clerk. But now, you know, every once in a while I'll do them. I usually do my own orders, but I appreciate -- I appreciate the help from both of you.

But I'll give you 30 days. I mean, that gives us November 11th. I mean, one way or the other, we're talking about on this case

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one month. We're not talking about -- and I anticipate receiving your proposed orders and -- within -- I mean, I anticipate getting the order to you one way or the other by Thanksgiving -- before Thanksgiving. So that way --

MR. ABNEY: Thank you.

THE COURT: One way or the other you all have got an order before Thanksgiving. Okay?

MR. GOLDSTEIN: Thank you, Judge.

THE COURT: All right. Thank you, guys.

MR. ABNEY: Thank you, Judge.

THE COURT: All right. Let me make sure I've got all the exhibits.

(Conclusion of hearing.)

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C E R T I F I C A T E

STATE OF SOUTH CAROLINA:

COUNTY OF CHARLESTON:

I, EVE WILBANKS, Registered Professional Reporter and Notary Public, State of South Carolina at Large, certify that I was authorized to and did transcribe the foregoing bench trial from audio files; and that the transcript is a true record of the statements given by the parties to the best of my ability.

I further certify that I am not a relative, employee, attorney or counsel of any of the parties, nor am I a relative or employee of any of the parties' attorney or counsel connected with the action, nor am I financially interested in the action.

WITNESS MY HAND AND OFFICIAL SEAL this 8th day of February, 2019, in the City of Charleston, County of Charleston, State of South Carolina.

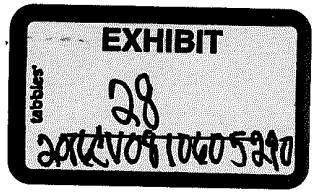
Eve Wilbanks,
Registered Professional Reporter
and Notary Public

My commission expires:
November 18, 2024

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	El Alamo			Hanahan's			LG's			Bucca's		
	2014	2015	2016	2014	2015	2016	2014	2015	2016	2014	2015	2016
Disturbance	7	16	7	0	1	0	4	6	0	2	2	0
Assaults/Incidents	1	5	1	0	0	0	0	0	0	0	1	0
Drug Violations/Incidents	3	2	5	0	0	0	0	0	0	0	0	0
Weapon Law Arrest/Incidents	1	1	0	0	0	0	0	0	0	0	0	0
Disorderly Conduct(Fighting, Public Urination, Public Drunk, etc...)	11	6	4	0	1	0	1	0	0	1	1	0
Resisting Arrest/Failure to Stop on Command/Use of Force	2	0	3	0	0	0	0	0	0	0	0	0
ABC Violation (Open Container)	1	0	1	0	0	0	0	0	0	0	0	0
Minor in Poss. Of Alcohol/Fake ID	3	0	3	0	0	0	0	0	0	0	0	0
Aggravated Assault	0	1	0	0	0	0	0	0	0	0	0	0
Traffic Arrest	3	1	0	0	0	0	0	0	0	0	0	0
DUI	0	1	2	0	0	0	0	0	0	0	0	0
Fire Code Violation (Over Occupancy)	1	0	0	0	0	0	0	0	0	0	0	0
General Complaint	1	1	0	0	0	0	0	1	0	0	0	0
Property Crime Reports (Larcenies, Malicious Damage, ETC...)	3	5	1	0	0	0	2	1	0	0	0	0
Total Arrests	22	13	9	0	0	0	1	0	0	0	1	0
TOTAL CALLS FOR SERVICE	35	46	17	0	1	0	50	52	4	5	2	0
CALLS FOR SERVICE WITH REPORTS TAKEN	22	16	11	0	0	0	4	8	0	1	1	0

44 0 1 1



DEFENDANT'S EXHIBITS

1. Lease May 22, 2014
2. Lease December 1, 2015
3. Lease August 1, 2016
4. E-Mail August 6, 2016 and Text messages Sept. 22, 2016—Dec. 1, 2016
5. E-Mail August 6, 2016
6. Summary of Citations
7. Voice Mail Message
8. Deed Book 2071, Page 749, December 1, 2015
9. Deed Book 2071, Page 779, December 1, 2015
10. Mortgage Book 2264, Page 916, August 23, 2016
11. Rent checks August, September, October 2017
12. Check register October 1, 2017
13. Post Office Receipt September 18, 2017
14. Post Office Receipt October 10, 2017
15. Cashier's check in the amount of $2,852.00 dated April 3, 2017
16. Cashier's check in the amount of $2,852.00 dated May 16, 2017
17. Cashier's check in the amount of $1,114.00 dated May 16, 2017
18. Trust check #7031 payable to law firm on First Citizen's $2,852.00 dated April 18, 2017
19. Photo of front door ("A" D.H.E.C. rating)
20. Photo of interior of Latino Mix (inventory)

SHOPPING CENTER LEASE
5901 LOFTIS CENTER – HANAHAN, SOUTH CAROLINA
Aracelis Santos DBA La Mexicana

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1

SHOPPING CENTER LEASE AGREEMENT

This Lease, entered into this 22 day of May, 2014, between the Lessor and the Lessee hereinafter named:

1. **DEFINITIONS AND CERTAIN BASIC PROVISIONS:**

(a) Lessor: Francon, LLC

(b) Lessor's Address: PO Box 867.
Johns Island, SC 29457

(c) Rent Payment Address: PO Box 867.
Johns Island, SC 29457

(d) Lessee: Aracellis Santos

(e) Lessee's Notice Address: 28 Lighthouse Road
Goose Creek, SC 29455
Contact Person : Aracellis Santos
Phone Number: 843-200-0776

Lessee's Billing Address: 28 Lighthouse Road
Goose Creek, SC 29455
Contact Person : Aracellis Santos
Phone Number: 843-200-0776

(f) Lessee's Trade Name: La Mexicana (Mini Market/Cellular Store)

(g) Demised Premise Address: 5901 Loftis Rd.
Suite# 2, 4
Hanahan, SC 29406

(h) Demised Premises: Approximately 1,807 square feet. Lessee accepts the premises in its current condition., As- is , Where- is, with HVAC, Electrical, and Plumbing in good working condition.

(i) Lease Term: Commencing on the "Commencement Date" as hereinafter defined and ending Two (2) years Zero (0) months thereafter except that in the event the Commencement Date is a date other than the first day of a calendar month, said term shall extend for the number of days remaining in the calendar month following the Commencement Date, as further defined in Article 6.

(j) Proposed Turnover Date: June 1, 2014

(k) Minimum Guaranteed Rental Year One: **$790.56 per month, Year Two:** $814.28 per month, payable in advance, as further defined in Article 3.

(l) ~~Percentage Rental: Percent %f gross sales per calendar year in excess of the breakpoint as further defined in Article 4.~~

(m) Initial Common Area Maintenance charge per month, as further defined in Articles 9 and 11. **$96.37 per month.**

(n) Initial Tax Escrow payment per month, as further defined in Articles 10 and 11. **__$135.53____ per month.**

(o) Initial Insurance Escrow payment per month, as further defined in Articles 11, 14 and 16. **__$66.26____ per month**

(p) Total Initial Monthly Payment: **$1,088.72**

(q) Prepaid Rent to be submitted with executed Lease: $1.088.72

(q) Security Deposit, as further defined in Article 5: **$1,088.72**

(r) Permitted Use, as further defined in Article 7: The Demised Premises shall be used for a Mexican Mini Market / Cellular Phone Store.

(s) The terms "Lessor" and "Lessee" shall include, whenever the context permits or requires, a singular or plural, and the Heirs, Legal Representatives, Successors and Assigns of the respective parties.

2) GRANT - In consideration of the rents agreed to be paid and of the covenants and agreements made by the respective parties hereto, Lessor demises and leases to Lessee, and Lessee hereby leases from Lessor, the Demised Premises, upon the terms and conditions herein provided, together with the right to use, in common with others entitled thereto, the Common Areas (as hereinafter defined), subject to the terms and conditions of this Lease and to reasonable rules and regulations for the use thereof as prescribed from time to time by Lessor.

3) RENTAL - Lessee agrees to pay Lessor, without notice, demand, deduction or offset whatsoever, as monthly rent for the Demised Premises a fixed minimum rent (hereinafter the "Minimum Rent") as shown in Paragraph 1 (k) of this Lease, payable monthly in advance on the first day of each and every calendar month during the term of this Lease.

In the event that the date of commencement of rent hereunder shall occur on a day other than the first day of the month, the first rental payment shall be adjusted for the fractional monthly period so that all rental payments other than the first shall be due and payable on the first day of each month.

A late charge of ten percent (10%) of the total monthly rental payment may, in the sole discretion of Lessor, be added to each and every monthly rent payment which is not received by Lessor prior to the sixth (6th) day of the month for which such payment is due. Such late charge, if added, shall be due and payable on or before the first (1st) day of the month immediately following the month for which the rent payment was not timely made. Any amount due from Lessee to Lessor hereunder which is not paid when due, including late payment charges, shall bear interest at one and one half percent (1.5%) per month from the due date until paid unless otherwise specifically provided herein, but the payment of such interest shall not excuse or cure any default by Lessee under this Lease. However, nothing contained in this Article 3 or elsewhere in this Lease shall enable Lessor to collect an amount of interest on past due amounts or penalties on late payments (if such penalties are deemed to be interest under applicable law) greater than that allowed by applicable law, and the terms and provisions of this Lease shall be modified accordingly to comply with applicable usury laws.

Lessor's election not to charge the stated ten percent (10%) penalty for late payment shall not constitute or be a waiver or preclude the Lessor from charging such late payment penalty at other times. Lessor shall be entitled to collect from Lessee all expenses incurred by Lessor involving collection of late rent, including, but not limited to, reasonable attorney's fees and court costs.

Lessor shall apply the receipt of payments from Lessee in the following order: first, toward the payment of any interest charges accrued against the Lessee's account; second, toward the payment of any late fees and any legal expenses or additional administrative costs incurred by Lessor to enforce the provisions of this Lease; third, toward the payment of additional rent such as real estate taxes, insurance premiums and/or common area maintenance charges; and finally, toward the payment of minimum rent and percentage rent.

~~4) PERCENTAGE RENTAL~~

~~(a) In addition to the Minimum Rent, Lessee shall pay as additional rent (hereinafter the "Percentage Rent"), the amount indicated in Paragraph 1 (l) of this Lease. The Breakpoint shall be calculated by dividing the Lessee's applicable yearly Minimum Rent by the percentage indicated in Paragraph 1 (l). If Lessee shall not occupy the Demised Premises for a full calendar year, the breakpoint shall be adjusted proportionately.~~

~~(b) Lessee shall submit to Lessor monthly its gross monthly sales figures. Such figures shall be received by Lessor by the tenth (10th) day of the month following the month of the sales. Within sixty (60) days after the end of each calendar year, Lessee shall submit to Lessor a statement signed by a public accountant or officer of Lessee, certifying the amount of gross sales, as hereinafter defined, in the Demised Premises for such year, and the Percentage Rent, if any, due for such year.~~

~~(c) Lessor or its agents shall have the right to inspect the records of gross sales relating to the Demised Premises at reasonable times during ordinary business hours upon notice. Lessor shall have twelve (12) months after receiving Lessee's yearly certification, as to gross sales, to conduct an audit. If any audit by Lessor shows an error in Lessee's original statement prejudicial to Lessor's receipt of Percentage Rent reported by Lessee's statement for~~

~~the period of the audit, Lessee shall promptly pay to Lessor the amount of the deficiency with interest thereon at the rate of one and one half percent (1.5%) per month. If any audit made by Lessor shows an error in Lessee's original statement prejudicial to Lessor's receipt of Percentage Rent in an amount equal to or greater than two percent (2%) of the amount of Percentage Rent reported by Lessee's statement for the period of the audit, the expenses of the audit shall be paid by the Lessee.~~

~~(d) The term "gross sales" as defined herein means total sales of Lessee or any occupant of the Demised Premises, whether such sales be evidenced by cash, check, credit, charge account, exchange or otherwise, and shall include, but not be limited to the amounts received from the sale of goods, wares and merchandise and for services performed, together with the amount of all orders taken, received or filled at the Demised Premises. Gross sales shall not include and there shall be deducted therefrom the following:~~

~~(1) returns or refunds, or credit received in settlement of claims for loss or damage to goods, wares or merchandise;~~

~~(2) all sales taxes, gross receipts taxes, and similar taxes whether imposed pursuant to any existing or future rules, regulations, laws or ordinances;~~

~~(3) any receipts from the transfer of goods, wares or merchandise from the Demised Premises to any other store or warehouse in the chain of stores operated by Lessee or its affiliate;~~

~~(4) any receipts from delivery of goods, wares, or merchandise from the Demised Premises to any manufacturers or suppliers thereof for any purposes except to sell;~~

~~(5) all receipts from vending machines, weighing machines, stamp machines, telephones and the like, except such portion thereof as may be retained by Lessee.~~

5) SECURITY DEPOSIT - Lessee, concurrently with the execution of this Lease, has deposited with Lessor a Security Deposit in the amount shown in Paragraph 1 (q) as a security for the performance of Lessee's obligations hereunder. If Lessee defaults with respect to any provision of this Lease including but not limited to the provisions relating to the payment of Rent, Lessor, in its sole discretion, may elect to use, apply or retain all or any part of the Security Deposit for the payment of any Rent or any other sum due to Lessor hereunder or for the payment of any other loss or damage which Lessor may suffer by reason of Lessee's default. If any portion of the Security Deposit is so used or applied, Lessee shall, within five (5) days after written demand therefore, deposit with Lessor an amount sufficient to restore the Security Deposit to its original amount and Lessee's failure to do so shall be a material breach of this Lease. Unless required by applicable law, Lessor shall not be required to keep the security deposit separate from its general funds and Lessee shall not be entitled to interest on such deposit. If Lessee shall fully and faithfully perform each provision of this Lease to be performed by it, the Security Deposit or any unused balance thereof shall be returned to Lessee within thirty (30) days following Lease expiration and upon Lessee's vacating the Premises and removing all of its property. The Security Deposit shall not constitute prepaid rent or liquidated damages, but it may, at Lessor's sole option, be applied by Lessor toward the payment of the final month's rent due under the Lease. Lessor may transfer the Security Deposit to a transferee of Lessor's interest in the Premises or the Shopping Center whereupon Lessor shall be discharged from any further liability to Lessee for the Security Deposit.

6) COMMENCEMENT OF TERM AND RENT - The term of this Lease and the accrual of rental hereunder shall commence 60 days after turnover of the Demised Premises to Lessee by the Lessor. ~~, or the date which Lessee opens its store in the Demised Premises for business with the public, whichever first occurs.~~ Lessor and Lessee acknowledge that certain obligations under various articles of this Lease may commence prior to the commencement date of the lease term (e.g., construction, indemnities, liability insurance), and agree that this is a binding and enforceable agreement as of the date Lessor and Lessee execute this Lease. Within Thirty (30) days after delivery of the Demised Premises to Lessee, Lessee shall commence its improvements to the Demised Premises. Lessee shall complete all of Lessee's improvements within the above mentioned Sixty (60) day period.

In the event Lessor notifies Lessee, in writing, that the premises are substantially completed, and if the Lessee fails to take possession on or before the commencement date, and/or to open the premises for business, fully fixtured, stocked and staffed within Thirty (30) days after the commencement date, then the Lessor shall have, in addition to any and all remedies herein provided, the sole option to immediately cancel and terminate this Lease.

Upon either party's request, Lessee and Lessor shall execute a document in recordable form setting forth the exact commencement date of the term of this Lease. Fees relative to recordation of said document shall be borne by the requesting party. In any event, Lessee, at Lessor's request, will execute a letter confirming the actual commencement date of the Lease.

7) USE OF PREMISES -

(a) It is understood and agreed that the Demised Premises will be used and occupied by Lessee solely for that purpose designated in Paragraph 1 (r) above, and for no other purpose without the written consent of Lessor. As an inducement to Lessor to execute this Lease, Lessee agrees to conduct its business in the Demised Premises on the days and during the hours which are generally accepted as the times of operation of the Shopping Center businesses. Lessee agrees to keep its store adequately stocked with saleable merchandise and adequately staffed with employees.

(b) Lessee shall not place showcases, coin operated devices, other selling devices, or merchandise in any parking lot or other common facility or on the outside of any store building in the Shopping Center; or permit, allow or cause to be used in or about the Shopping Center any phonographs, radios, public address systems, sound production or reproduction devices, mechanical or moving display devices, or any similar advertising media or devices the effect of which shall be visible or audible from the exterior of any store space. It is further understood and agreed that Lessee shall not store, sell or display any merchandise on any portion of the sidewalk or other common areas of the Shopping Center for any purposes whatsoever without first obtaining written permission from Lessor, supplying a letter of indemnification holding Lessor harmless, and furnishing Lessor with a Certificate of Liability Insurance to cover such an event.

(c) Lessee shall not use the Demised Premises for any illegal trade or purpose. Lessee shall at all times comply in its occupancy and use with all applicable local ordinances and all state and federal laws and regulations relating thereto. Lessee shall refrain from permitting any nuisance or unlawful or immoral practice to be carried on within the Demised Premises. Lessee agrees to endeavor to keep the Demised Premises in such a manner so as not to disturb other tenants and/or customers and so as not to detract from the reputation and integrity of the Shopping Center. Lessee shall not use or permit the use of the Demised Premises for the generation, storage, treatment, use, transportation or disposal of any chemical, material, or substance which could pose a hazard to the health and safety of the other tenants and occupants of the Shopping Center.

(d) Lessee shall not, without Lessor's prior written consent, conduct within the Demised Premises, any fire, auction, or "going-out-of business" sale. Lessee shall not distribute leaflets or pamphlets in the common area.

8) CARE OF PREMISES - Lessee shall at all times keep the Demised Premises in a neat and orderly condition. Lessee shall keep the entry ways and delivery areas adjoining the building clean and free from rubbish and dirt. Lessee agrees to clean adequately said Demised Premises as needed from time to time during the term of this Lease. Lessee will not make or suffer any waste of the Demised Premises.

Lessee shall, at its expense, provide for the regular removal of all trash, rubbish and garbage from the Demised Premises. Lessee shall not permit the burning of any rubbish or garbage in or about the Shopping Center. If garbage and rubbish is to be accumulated by dumpsters, canisters or containers on Shopping Center property, the Lessor, or its property manager, shall have the right to reasonably regulate the method of accumulation for health and aesthetic purposes. Lessee shall abide by any promulgated regulations.

9) COMMON AREAS AND PARKING - Common areas shall mean the entire Shopping Center except the portions upon which buildings, structures or other improvements have been erected, and except the areas designated for other uses by Lessor on the plot plan of the Shopping Center or otherwise. All common areas in or about the Shopping Center shall be subject to the exclusive control and management of the Lessor.

Lessor grants to Lessee, its employees, agents, suppliers, customers and invitees, a non-exclusive right at all times to use, during the term of this Lease, all the common areas, including parking areas, along with other similarly entitled, for parking and for ingress and egress between the Demised Premises and all other portions of the Shopping Center and the adjoining streets, alleys and sidewalks.

With respect to all parking facilities in the Shopping Center, the same shall be maintained by Lessor in good repair and clean condition, at all times during the term of this Lease.

Lessee agrees to cause its officers, agents, employees, contractors, licensees and concessionaires to park their cars only on such areas as Lessor may from time to time designate as employee parking areas, provided the same shall be within a reasonable distance of the Demised Premises. If requested by Lessor, Lessee shall furnish the automobile license numbers of the vehicles customarily used by Lessee and Lessee's officers, agents, employees, contractors,

licensees, and concessionaires.

All costs and expenses of every kind and nature paid or incurred by Lessor in the operation, equipping, policing, lighting, repairing, replacing and maintaining of all parking facilities, utilities serving the Shopping Center (including on and off-site utilities and facilities such as sewer lift stations, retention/detention ponds, drainage facilities, roadways, driveways, and all expenses relating thereto) and all other areas of the Shopping Center (including but without limitation, all landscaping and gardening), shall be prorated as hereinafter set forth, and Lessee shall share therein in the manner hereinafter provided. Such costs and expenses shall likewise include (but shall not be limited to) water and sewer charges; utilities system installation charges imposed by a utility company; fees for required licenses and permits; supplies; operation and maintenance of lift stations; and all other reasonable expenses incurred by the Lessor in the upkeep, maintenance, and operation of the Shopping Center common area. Lessee shall be responsible for maintaining and paying for their trash dumpsters (and grease receptacles if applicable) and trash removal.

Anything in this Lease to the contrary notwithstanding, Lessor shall have the right at any time during the term of this Lease to alter, modify, change or move the parking facilities or other common areas within the Shopping Center as now constituted or planned or hereafter enlarged. It is expressly understood and agreed that the designation or use from time to time of portions of the Shopping Center as common areas shall not restrict Lessor's use of such areas for buildings, structures, or for such other purposes as the Lessor shall determine.

10) TAX RESPONSIBILITIES - The Lessor shall make all payments required to be made under the terms of any mortgage executed by Lessor or which may hereafter become a lien on the Demised Premises. Lessor shall pay all real estate taxes, assessments, and other charges which may be levied, assessed or charged against the Shopping Center.

The Lessee shall pay all operating license fees for the conduct of its business and ad valorem taxes levied upon its trade fixtures, personal property, inventory and stock of merchandise.

Lessee agrees to pay and discharge any mechanics, materialman or other lien against the Demised Premises or Lessor's interest therein claimed in respect to any labor, services, materials, supplies or equipment furnished or alleged to have been furnished to, or upon the request of, Lessee, provided, that Lessee may contest such lien claim upon furnishing to Lessor such indemnification for the final payment and discharge thereof, together with the costs and expenses of defending the same, as Lessor may reasonably require.

Upon execution of this Lease Agreement, Lessee covenants and agrees to pay any and all documentary stamp taxes assessed by any governmental authority, upon the within Lease, by reason of its execution and/or recording or otherwise.

Upon Lessee's failure to make payment of its tax or lien responsibilities under this provision, Lessor shall have the right to make payment on behalf of Lessee, and such payment shall be deemed as additional rent due for the month in which the taxes are paid, and shall become due and payable upon ten (10) days written notice to Lessee evidencing such payment by Lessor.

Lessee shall not mortgage, pledge or otherwise encumber its interest in this Lease or in the Demised Premises.

11) PAYMENTS OF PRORATA SHARE OF COMMON AREA MAINTENANCE, TAXES AND INSURANCE - As additional rent, Lessee agrees to pay its own prorata share of all common area maintenance, taxes (including real estate taxes and any cost incurred due to the reasonable appeal of same), assessments, All-Risk insurance premiums, general liability insurance premiums, and all other charges levied against the Shopping Center. The prorata share shall mean the proportion that the floor area of the Demised Premises bears to the floor area of all of the leasable space of the buildings situated in the Shopping Center. In the event any Lessee(s) self-insures, and/or is taxed separately, and/or is responsible, under terms of its lease, for payment of a specific common area maintenance expense, then the prorata share of All-Risk insurance premium, general liability insurance premium, real estate tax expense, or specific common area maintenance expense shall be determined by the proportion of floor area that the Demised Premises bears to the floor area of the actual area covered by such insurance policy, tax invoice, and/or common area maintenance expense.

Lessee's prorata share of costs and expenses as above set out shall be paid monthly in advance based upon reasonable estimates for such charges made by Lessor. An adjustment shall be made for each of said charges on a calendar year basis when the actual costs have been determined. Should Lessee's lease term for the Demised Premises end prior to a full calendar year, its prorata share will be apportioned according to the term as compared to a full calendar year.

12) CONSTRUCTION OF IMPROVEMENTS-

~~(a) Lessor, at Lessor's cost and expense, shall construct all improvements, including~~

~~buildings and common areas, in general accordance with the plot plan attached hereto and marked as Exhibit "B". Lessor represents that all work shall be performed in a good workmanlike manner and shall include those things designated as "Lessor's Work" attached hereto and marked as Exhibit "C".~~

a) Lessee, at its sole cost and expense, shall perform and construct, in a good and workmanlike manner, those things designated as "Lessee's Work", attached hereto and marked as Exhibit "D". Lessee shall obtain permits required to perform such work, and shall provide to Lessor copies of such permits prior to commencing Lessee's Work. Upon completion of Lessee's Work, Lessee shall provide to Lessor an executed lien waiver from each contractor that performs a part of Lessee's Work, and, where the permitting jurisdiction has not issued a final certificate of occupancy for the Premises prior to the commencement of Lessee's Work, Lessee shall also provide Lessor a copy of the final certificate of occupancy issued by such jurisdiction.

(b) Lessor reserves the right at any time to make alterations or additions to the ~~building which the Demised Premises are contained and to build adjoining the same in general conformity with the plot plan attached hereto and designated as Exhibit "B".~~ Lessor also reserves the right to construct other buildings or improvements in the Shopping Center area from time to time and to make alterations thereof or additions on any such building or buildings and to build adjoining same.

13) FIXTURES AND INTERIOR ALTERATIONS - Lessor shall have the right to approve in advance any and all interior alterations or modifications desired to be made by Lessee. Such approval shall not be unreasonably withheld. Any alterations or improvements in and to the Demised Premises shall not adversely affect the structural integrity of the Demised Premises or reduce its value. Upon approval, the Lessee shall make such alterations, additions or improvements in a good workmanlike manner and in accordance with all requirements of municipal or other governmental authorities. Under no circumstances shall Lessee be allowed to make alterations, additions, or improvements whereby the roof or exterior walls of the Demised Premises would be penetrated without first procuring prior written consent of the Lessor or its agent. It is expressly understood that the use of the roof above the Demised Premises is reserved to the Lessor. All permanent structural improvements shall belong to Lessor and become a part of the Demised Premises upon termination or expiration of this Lease.

Lessee may construct, build, and install in said Demised Premises any and all racks, counters, shelves and other fixtures and equipment of every kind and nature as may be necessary or desirable in the Lessee's business, which racks, counters and other fixtures and other equipment shall at all times be and remain the property of Lessee, and Lessee shall have the right to remove all or any part of the same from said Demised Premises at any time so long as Lessee is not in default of the terms and provisions of this Lease; provided, Lessee shall repair or reimburse Lessor for the cost of repairing any damage to said Demised Premises resulting from the installation or removal of such items.

In the event that applicable governmental laws, codes, ordinances or regulations require additional improvements to the Demised Premises not included in Exhibit C ("Lessor's Work") because of the nature of Lessee's use, then Lessee shall be responsible for the cost of such additional improvements.

14) INDEMNIFICATION - Lessee agrees to indemnify and save harmless Lessor from any claim or loss by reason of any accident or damage to any person or property happening in or about the Demised Premises, and further agrees to carry, at its own expense, public liability insurance coverage on the Demised Premises with a company qualified to transact business in the state in which the Demised Premises are located, stipulating limits of liability of not less than $1,000,000.00 per occurrence and $2,000,000.00 aggregate. The Lessor and its managing agent shall both be named as additional insureds on such coverage, and a certificate of such coverage from the insurer, providing thirty (30) day's notice to Lessor and the managing agent prior to cancellation or termination, shall be furnished to Lessor and the managing agent prior to the date that Lessee takes possession of the Demised Premises. If Lessee fails to comply with the above requirement, Lessor may obtain such insurance and keep the same in effect, and Lessee shall pay the Lessor as additional rent the premium cost thereof upon demand.

Likewise, Lessor agrees to indemnify and save harmless Lessee from any claim or loss by reason of an accident or damage to any person or property happening on any common area (including without limitation, parking area, sidewalks, ramps and service areas) of the Shopping Center, and further agrees to carry public liability insurance coverage on all common areas with a company qualified to transact business in the state in which the Demised Premises are located, stipulating limits of liability of not less than $1,000,000.00 combined single limit coverage.

15) GENERAL DAMAGE AND FIRE DAMAGE- All property kept, stored or maintained in the Demised Premises shall be so kept, stored or maintained at the sole risk of Lessee.

Except in the case of Lessor's gross negligence, Lessor shall not be liable to Lessee for any damage to property of Lessee or of others located on the Demised Premises, nor for the loss of, or damage to, any property of Lessee or of others by theft or otherwise. Except in the case of Lessor's gross negligence, Lessor shall not be liable for any injury or damage to persons or property resulting from fire, explosion, falling plaster, steam, gas, electricity, water, rain or snow, or leaks from any part of the Demised Premises or from the pipes, appliances or plumbing works, or from any other place, or from dampness, or water being upon or coming through the roof, skylight, vent, trapdoor, or from any other cause whatsoever. Lessor shall not be liable for any damage caused by other tenants or persons in or about the Demised Premises, or for damage caused by operations of any third party contractors, private, public, or quasi-public.

Should the Demised Premises be partially destroyed by fire or other casualty so that at least half of the premises may be occupied by Lessee, Lessor will with all due diligence, repair or restore the same so that thereafter the property shall be substantially in the same condition as originally delivered to Lessee. In such event, the rents shall abate in proportion to the restrictive use by Lessee prior to the repair or restoration.

Should the Demised Premises be so extensively damaged by fire or other casualty as to require rebuilding, then the Lessor shall promptly, at its expense, restore or rebuild the same so that thereafter the Demised Premises shall be substantially in the same condition as originally delivered to Lessee. The rent shall cease and abate from the date of such destruction until the property has been rebuilt and possession tendered to the Lessee, and for such reasonable additional time, not to exceed thirty (30) days, as is required for Lessee to complete its work and prepare for opening. Any rent paid in advance by the Lessee shall be refunded to it in such event; provided, however, that if such damage occurs in the last two (2) years of the initial term or any renewal thereof, and Lessee does not exercise any renewal options available to it, or negotiate a new lease for at least five (5) years, Lessor may elect not to rebuild and cancel this Lease Agreement.

16) HAZARD INSURANCE BY LESSOR - Lessor will carry and maintain or cause to be maintained All-Risk insurance coverage on the Demised Premises and other buildings in the Shopping Center with customary deductibles not to exceed $5,000.00. If during the term of this Lease, the Demised Premises are used for any purpose or in any manner which causes an increase in the rates of such insurance, the Lessee shall pay as additional rent the additional premium caused thereby upon ten (10) days written notice to Lessee.

17) MUTUAL WAIVER OF SUBROGATION - Lessor and Lessee each hereby releases the other and their respective employees, agents and every person claiming by, through or under either of them, and Lessee hereby releases all other tenants in the Shopping Center of which the Demised Premises is a part, and the employees and agents of said tenants, from any and all liability and responsibility for any loss or damage to any property (real or personal) caused by fire or any other insured peril covered by insurance policies for the benefit of either party, even if such loss or damage shall have been caused by the fault or negligence of the other party, their employees or agents, or such other tenant or any employee or agent thereof.

18) DEFAULT BY LESSEE -

(a) The Lessee shall be in financial default if it fails:

(i) to pay when due each installment of minimum rent;

~~(ii) to pay when due percentage rent;~~

(iii) to pay when due additional rent by way of prorata contribution as defined in Paragraph 11 above;

(b) Lessee shall be in general default if it shall fail to keep or shall violate any other conditions, stipulations, or agreements contained herein on the part of the Lessee to be kept and performed.

(c) In the event Lessee is in financial default, it shall have a grace period of ten (10) days to cure such default after Lessor shall have mailed, by U.S. Postal Service, Lessee written notice thereof, provided however, if Lessor shall have mailed to Lessee a notice of such default, even though the same shall have been cured and this Lease not terminated, and within twelve (12) months from the date which said notice of default has been mailed by Lessor to Lessee, Lessee shall again be in financial default, the same shall be deemed an event of default without any notice or grace period.

(d) In the event Lessee is in general default, it shall have a grace period of thirty (30) days to cure such default after Lessor shall have mailed, by U.S. Postal Service, Lessee written notice thereof; provided however, if Lessor shall have mailed to Lessee a notice of such default,

even though the same shall have been cured and this Lease not terminated, and within twelve (12) months from the date which said notice of default has been mailed by Lessor to Lessee, Lessee shall again be in general default, the same shall be deemed an event of default without any notice or grace period.

(e) In the event Lessee is in either financial or general default, Lessor, at its option may either

(i) terminate this Lease, or

(ii) re-enter the Demised Premises and remove all property therefrom and relet the Demised Premises, making reasonable efforts therefore, and receive rent therefrom, but Lessee shall remain liable for the deficiency if any, between the Lessee's rent hereunder and the rental obtained by Lessor on reletting. The rights of the Lessor, upon default by Lessee, shall in no way preclude Lessor from pursuing any other legal remedies available.

(f) No delay or omission by Lessor to exercise any right or power accruing upon any noncompliance or default by Lessee with respect to any of the terms hereof, shall impair any such right or power or be construed to be a waiver thereof. Every such right or power may be exercised at any time during the continuation of this Lease. It is further agreed that a waiver by Lessor of any of the covenants and agreements hereof to be performed by Lessee shall not be construed to be a waiver of any subsequent breach thereof or of any covenants or agreement herein contained.

(g) In addition to all other rights granted to Lessor under this Lease, or under prevailing law, or if Lessee shall be in default, Lessor or its agents or employees may immediately or any time thereafter re-enter the Demised Premises and remove Lessee, Lessee's agents, any subtenants, any licensees, any concessioners and any invitees, and any of its or their property from the Demised Premises.

Re-entry and removal may be effectuated by summary dispossession proceedings, by any suitable action or proceeding at law, by force, or otherwise. Lessor shall be entitled to the benefits of all provisions of law respecting the speedy recovery of lands and tenements held over by Lessee or proceedings in forcible entry and detainer. Lessor shall not be liable in any way in connection with any action it takes pursuant to this section. Lessee's liability under the terms of this Lease shall survive Lessor's re-entry, the institution of summary proceedings, and the issuance of any warrants with respect thereto.

19) **DEFAULT BY LESSOR** - In the event Lessor shall fail to perform any obligations specified in this Lease, then Lessee may, after the continuance of any such default for thirty (30) days after written notice thereof to Lessor, cure such default, all on behalf of and at the expense of Lessor, and do all necessary work in connection therewith, and Lessor shall on demand, pay Lessee forthwith the amount so paid by Lessee.

A default hereunder shall be deemed cured if Lessor in good faith commences performance requisite to cure same within thirty (30) days after receipt of notice and thereafter continuously and with reasonable diligence proceeds to complete the performance required to cure such default.

20) **LESSEE'S REPAIRS** - Lessee agrees to keep the interior of the Demised Premises, including, but not limited to, all doors (to include freight and entrance), windows, door and window hardware, glass, plate glass, electrical, plumbing, floor covering, fixtures, interior walls and ceiling, in good condition and repair, and agrees to replace damaged items, and shall make all necessary repairs in a reasonable and timely manner, except repairs which are the responsibility of Lessor or which are made necessary by reason of fire and other unavoidable casualties to the extent they are covered by Lessor's fire and extended coverage insurance, and excepting reasonable wear and tear. Notwithstanding any provision of this Lease to the contrary, within the repair and replacement responsibilities of Lessee shall be included any and all maintenance, repairs or replacement to heating and air conditioning equipment, including heating and air conditioning units, insulated duct work, registers and grilles.

Lessee agrees to procure and maintain an HVAC maintenance contract with a reputable contractor, providing for the maintenance and repair of the heating and air conditioning systems according to manufacturer's specifications. Notwithstanding anything to the contrary set forth above, if Lessee does not perform its maintenance and repair obligations in a timely manner as set forth in this Lease, commencing the same within five (5) days after notice from Lessor specifying the work or repairs needed (or sooner in the event of emergency repairs) and thereafter diligently and continuously pursuing completion of unfulfilled maintenance or repair obligations, then Lessor shall have the right, but not obligation, to perform such maintenance or repairs, and any amounts so expended by Lessor shall be paid by Lessee to Lessor upon

demand, with interest at the maximum rate allowed by law (or the rate of 15% per annum, whichever is less) accruing from the date of expenditure through the date paid.

21) LESSOR'S REPAIRS - Lessor shall, at its cost and expense, repair and maintain the exterior of Lessee's store building, including the roof, gutter, downspouts, masonry walls, foundation and structural members, in good condition and repair. Lessor shall repair any portion of the common areas at any time when necessary; provided, however, that Lessor shall not be obligated to make or pay for any repairs to Lessee's store building, or common area, rendered necessary by the fault, act or negligence of the Lessee or any of its servants, agents or employees, except in the case of damage by fire or the elements, or other casualty to the extent such repairs are covered by Lessor's fire and extended coverage insurance. In the case of damage caused by the fault, act or negligence of Lessee or its servants, agents or employees that is covered by Lessor's fire and extended coverage insurance, Lessor shall only be responsible for paying that portion of the cost of repair that is actually covered by insurance, but Lessee shall pay for any uncovered cost of the repair, such as reasonable deductibles and amounts in excess of policy limits. HVAC, Electrical, and Plumbing are in good working condition, upon occupancy. See Exhibit A concerning HV/AC work

22) UTILITIES - Lessee agrees to pay all charges for telephone, electricity, water and other utilities or services used by the Lessee on the Demised Premises, and Lessor agrees at all times to provide Lessee with access to such utilities; provided, however, in no event shall Lessor be liable for any interruption or failure in the supply of utilities to the Demised Premises. Lessee shall pay for all such utilities from the date the Lessor delivers the Demised Premises to Lessee.

23) RIGHT OF ACCESS - During any reasonable time before and after the commencement date of this Lease, Lessor, or his authorized representative, may enter upon the Demised Premises, or any portion thereof, and any appurtenances thereto (with men, and materials, if required) for any of the following purposes:

(a) inspecting the Demised Premises;

(b) making any required repairs, replacements, or alterations which Lessor may be required to perform under this Lease, or which Lessor may deem desirable for the Demised Premises; and

(c) showing the Demised Premises to prospective purchasers, lenders or Lessees.

Lessor shall have the right to enter the Demised Premises at any time in the event of an emergency, including the right to enter the Demised Premises for the purpose of making emergency repairs, whether such repairs are considered Lessor repairs under Section 21 above, or Lessee repairs under Section 20 above (in the event that Lessee fails to make timely repairs).

24) SIGNS - Lessee shall place a sign or signs at the areas designated for the Demised Premises. Said sign or signs shall be approved by Lessor or its managing agent in writing and installed by a professional sign company, and shall conform to the requirements of the Shopping Center and all local ordinances; provided, however, that the care and maintenance of such sign shall be the responsibility of Lessee.

25) FORCE MAJEURE - If either Lessor or Lessee fail to perform any of its obligations under this Lease as a result of Force Majeure, such party shall not be liable for loss or damage for the failure and the other party shall not be released from any of its obligations under this Lease. If either Lessor or Lessee is delayed or prevented from performing any of its obligations as a result of Force Majeure, the period of delay or prevention shall be added to the time herein provided for the performance of any such obligation.

"Force Majeure" shall mean any period of delay which arises from or through Acts of God; strikes, lockouts, or labor difficulty; explosion, sabotage, accident, riot, or civil commotion; act of war; fire or other casualty; legal requirements; delays caused by the other party; and causes beyond the reasonable control of a party.

26) QUIET ENJOYMENT - Lessor covenants, warrants and represents that upon commencement of the lease term, Lessor has full right and power to execute and perform this Lease, and to grant the estate demised herein; and that Lessee, upon the payment of the rent herein reserved and performance of the covenants and agreements hereof, shall peaceably and quietly have, hold and enjoy the Demised Premises and all rights, easements, and privileges belonging or in any way appertaining thereto, during the term of this Lease.

27) BANKRUPTCY - In the event a petition in a bankruptcy or insolvency or for reorganization or for the appointment of a receiver or trustee of all or a portion of the property

of Lessee shall be filed against Lessee in any court, pursuant to any statute either of the United States or of any state, and if, within thirty (30) days thereafter, Lessee fails to secure a discharge thereof, or in the event Lessee shall voluntarily file any such petition or make an assignment for the benefit of creditors or petition for or enter into an arrangement, or if this Lease is taken under writ of execution (herein called "Act of Bankruptcy"), then Lessee shall be deemed in breach and default of this Lease and Lessor, in its discretion and at its election may, to the extent permitted by law, elect to cancel and terminate this Lease. Upon the cancellation and termination of this Lease pursuant to the provisions of this Section, Lessor, in addition to all the remedies provided by law, shall be entitled to all its remedies set forth in this Lease upon Lessee's default.

In the event this Lease is assumed or assigned by a trustee pursuant to the provisions of the prevailing Bankruptcy Law, then the trustee shall cure any default under this Lease and shall provide such adequate assurance of future performance of this Lease as is required by the Bankruptcy Law including the following

(a) the source of Minimum Rent and other considerations due under this Lease;

~~(b) that any Percentage Rent due under this Lease will not decline;~~

(c) the assumption or assignment of this Lease will not breach any provision such as a radius, location, use or exclusivity provision in any other Lease, finance agreement or master agreement relating to the Shopping Center; and

(d) the assumption or assignment of this Lease will not disrupt any tenant mix or balance.

In the event the trustee does not cure such defaults and provide such adequate assurances under the Bankruptcy Act, then this Lease shall be deemed rejected and Lessor shall have the right to immediate possession of the Demised Premises, and shall be entitled to all remedies provided by the Bankruptcy Act for damages for breach and/or termination of this Lease.

28) CONDEMNATION - If more than twenty-five percent (25%) of the Demised Premises shall be taken in any proceeding by public authorities by condemnation or otherwise, or be acquired for public or quasi-public purposes, Lessee and Lessor shall have the option to terminate this Lease, in which case any prepaid rent shall be refunded to Lessee. In the event that only a portion of the Demised Premises shall be taken by condemnation or other proceeding and the remaining part of the Demised Premises shall be reasonably usable by Lessee, then the rent shall be reduced in the same proportion that the amount of floor space in the Demised Premises is reduced by such condemnation or other proceeding. In the event that twenty-five percent (25%) or more of the parking area of the Shopping Center is taken Lessee shall have the option to terminate this Lease; provided, however, that Lessor shall have a period of at least ninety (90) days to cure the parking deficiency, or to diligently proceed to cure the parking deficiency, in which event Lessee shall not have the right to cancel this Lease; and further provided, that Lessee shall not have the right to cancel this Lease so long as Lessor maintains a parking ratio of at least four (4) parking spaces per one thousand (1,000) square feet of leasable building area in the Shopping Center. In any such proceeding whereby all or part of the said Demised Premises are taken, whether or not Lessee elects to terminate this Lease, Lessee shall waive all claims except for those pertaining to fixtures and relocation costs. In the event applicable law permits only one claim with respect to a taking, then Lessor and Lessee agree to file a joint claim to prosecute the respective claims.

29) ASSIGNMENT AND SUBLETTING - Lessee may not assign this Lease or sublet the Demised Premises or any part thereof without Lessor's prior written consent.

In the event of a sale or transfer of the Shopping Center, Lessor shall have the privilege of assigning this Lease, provided that at the time of such assignment, the assignee thereof shall execute and deliver to Lessee an assumption agreement by which the assignee shall assume all the responsibilities and obligations of Lessor hereunder. This provision shall apply to all reassignments of this Lease by the Lessor and all subsequent Lessors. Upon compliance with the above, the Lessor executing the assignment of Lease shall be released from all liability herein subsequent to the date of said assignment and the date of such assumption agreement by assignee. There will be a $1,000 assignment fee due for any approved assignment.

30) SUBORDINATION - Lessee agrees that this Lease shall at all times be subject and subordinate to the lien of any mortgages (which term shall include all security instruments) that may be placed on the Demised Premises by Lessor; and Lessee agrees, upon demand, without cost, to execute any instrument as may be required to effectuate such subordination within seven (7) business days after Lessor's request.

31) LESSEE'S ESTOPPEL CERTIFICATE -

(a) Within seven (7) days after each request by Lessor is received by Lessee, Lessee shall deliver an Estoppel Certificate to Lessor. The Estoppel Certificate shall be in writing, and shall be executed on behalf of Lessee by persons having appropriate authority. Each Estoppel

Certificate shall be made in favor of Lessor, any mortgagee, any assignee, any purchaser or any other person specified by Lessor.

(b) Each Estoppel Certificate shall contain information required by Lessor, including, but not limited to the following:

(i) whether Lessee is in possession of the Demised Premises;
(ii) whether this Lease is in full force and effect, and whether it has been modified;
(iii) whether Lessee contends that Lessor is in default under this Lease in any respect; and
(iv) the dates, if any, to which any rent charges have been paid in advance.

32) EXCULPATION - Anything to the contrary in this Lease notwithstanding, the covenants contained in this Lease to be performed by Lessor shall not be binding personally, but instead, said covenants are made for the purpose of binding only the fee simple or leasehold estate which Lessor owns in the Demised Premises.

33) NOTICE - All notices of default required to be given to Lessor shall be sent by certified mail to the address shown in Paragraph 1 (b). All rent payments shall be made to Lessor at the address shown in Paragraph 1 (c).

All notices of default required to be given to Lessee shall be sent by certified mail to Lessee at the address shown in Paragraph 1 (e).

All usual or ordinary correspondence shall be sent by regular mail. Each party shall promptly notify the other in writing of any change of address.

34) HOLDING OVER - In the event Lessee continues to occupy the Demised Premises after the last day of the term hereby created, or any extension thereof, and Lessor elects to accept rent thereafter, a tenancy from month to month shall be created and not for any longer period; provided, however, if the Lessee shall so hold over, Minimum Rent shall be paid at One and One-Half (1.5) the rate that Lessee was paying for the rental period immediately preceding the expiration of this Lease.

35) PARTIAL INVALIDITY - If any term or provision of the Lease or the application thereof to any person or circumstances shall, to any extent, be invalid or unenforceable, the remainder of this Lease, or the application of such term or provision to persons or circumstances other than those as to which it is held invalid or unenforceable, shall not be affected thereby, and each term and provision of this Lease shall be valid and be enforceable to the fullest extent permitted by law.

36) SIGNATURES REQUIRED - The submission of this document does not constitute a binding Lease Agreement until such time as it has been executed and delivered by Lessee and Lessor.

37) NO JOINT VENTURE - The relationship of the parties is that of Lessor and Lessee only, and nothing in this Lease shall be construed as creating a partnership, joint venture, principal, agent or any other relationship. Except as expressly otherwise provided herein, neither party shall have any right or power to create any expense or liability chargeable to the other party.

38) TIME OF ESSENCE - Time is of the essence in this Lease, and all provisions herein relating thereto shall be strictly construed.

39) ACCORD AND SATISFACTION - No payment by Lessee or receipt by Lessor of a lesser amount than the rent or other amounts herein stipulated shall be deemed to be other than on account of the stipulated rent and amounts due, nor shall any endorsement or statement on any check or any letter accompanying any check or payment thereof be deemed an accord and satisfaction, and Lessor may accept such check or payment without prejudice to Lessor's right to recover the balance of such amounts or pursue any other remedy provided in this Lease.

40) RECORDATION - Lessee shall not record this Lease without the written consent of Lessor.

41) CAPTIONS - The captions contained herein are for convenience and reference only and shall not be deemed as part of this Lease or construed as in any manner limiting or amplifying the terms and provisions of this Lease to which they relate.

42) RESPONSIBILITY OF LESSEE - Any restriction on, or requirement imposed upon,

51) RENEWAL OPTIONS - Lessee is granted the option, provided it is not in default of any of the provisions and conditions of this Lease, to renew the Lease for Two***(2) additional term of Two (2) years.*** The said renewal option shall be on the same terms and conditions as this Lease. The minimum guaranteed rental in the renewal option shall be the sum of ***$10,064.52*** to be paid in monthly installments of $838.71. **for the 1st year and $10,366.44 for the 2nd year with monthly payments of $863.87. The 2nd option, 1st year rent will be$10,677.36 with monthly payments of $889.79 and the 2nd year, rent will be $10,997.64 with monthly payments of $916.48.** The said renewal options shall be on the same terms and conditions as this Lease. Lessee shall exercise such option by giving written notice to Lessor, via certified mail, of its intention to do so, at least one hundred eighty (180) days prior to the end of the term of this Lease, or any extension thereof.

52) TERMINATION – Lessor has the right to terminate the Lease within Thirty (30) days after full Lease execution. Termination shall be at Lessor's sole discretion. Should Lessor terminate the Lease, all funds paid to Lessor by Lessee shall be returned in full.

****NOTE: ITEMS IN BOLD ITALIC ARE TO NOTE DEVIATION FROM LESSOR'S STANDARD FORM LEASE AND ARE FOR NO OTHER PURPOSE.***

Exhibit A

Lessor will pay for addition AC in the back of the space, however tenant must use landlords preferred HV/AC Company and tenant must coordinate this work under tenants GC when doing tenants up fit work. Work must be completed within 90 days of taking space.

COMMERCIAL LEASE

In consideration of the covenants herein contained, Aracelis Santos, hereinafter called **"Tenant"** and Harris Investment Holdings, LLC, Landlord, or Agent for the Landlord, hereinafter called **"Landlord"**, agree as follows:

For the period of time beginning on December 1, 2015, and ending at midnight on November 30, 2018, Landlord hereby grants to Tenant the sole and exclusive right to lease the real property known as:

Lot _____ Block _____ Section _____ Subdivision _____

Address 5901 Loftis Rd

Tax Map # 265-02-15-068 City Hanahan Zip 29410-2663

County of Berkeley, State of South Carolina.

THE ☐ LANDLORD ☐ TENANT IS LICENSED UNDER THE LAWS OF SOUTH CAROLINA AS A REAL ESTATE LICENSEE.

1. **RENT.** Tenant shall pay to the Landlord, a Monthly Base Rental and Additional Rent as follows:
   (a) MONTHLY BASE RENTAL. Tenant shall pay a Monthly Base Rental to Landlord for each month during the term of this lease or any renewal thereof, in advance on or before the 1st day of each month during the term of this Agreement. The amount of the Monthly Base Rental for the first year of this Agreement shall be Two Thousand, One Hundred Seventy-Six 30/100 Dollars ($ 2,176.30).
   (b) The rental for the first month of this lease shall be paid at the date of execution thereof. The Monthly Base Rental shall be increased as follows: 2% per year, for 2 additional Years.
   (c) ADDITIONAL RENT. In addition to the Monthly Base Rental and any accumulative adjustments, Tenant shall pay Additional Rent as indicated herein below (check all that apply):
      ☒ 1. PROPERTY TAXES (choose one):
         ☐ TAX INCREASE. Tenant shall pay annually a sum equal to any increase in real estate taxes (ad valorem, special assessments and any other government charges to include any solid waste disposal user fees) over those assessed for the year of 2015, on a pro rata basis. Presentation of copies of tax bills shall constitute sufficient evidence of additional rent due and shall be payable within fifteen (15) days after receipt thereof. Tenant shall be charged additional rent only for the portion of the calendar year during which this lease was in effect.

         ☒ NET LEASE. Tenant shall pay annually the real estate taxes (ad valorem, special assessments and any other government charges) upon presentation by the Landlord of tax bills on the property. These charges shall be payable by the Tenant within fifteen (15) days after receipt thereof. So long as Tenant shall not be in default, Tenant shall be responsible for the portion of the calendar year during which this lease was in effect.

      ☐ 2. PERCENTAGE OF GROSS SALES. Tenant shall pay annually a sum equal to _____ % of gross sales, as herein defined, in excess of _____ Dollars, ($ _____), in any lease year. Gross sales as used herein shall be the amount of the gross sales as indicated on the Tenant's South Carolina Tax Report (Form ST-3). Tenant shall deliver to Landlord a certified copy of each

[AS] TENANT, [___] TENANT, AND [___] LANDLORD HAVE READ THIS PAGE.

The Boulevard Company, LLC, 35 Broad Street Charleston, SC 29401 Phone: (843)619-7816 Fax:
Isabelle Martinez Alamo Cafe/Santos

Produced with zipForm® by zipLogix 18070 Fifteen Mile Road, Fraser, Michigan 48026 www.zipLogix.com

monthly report within ten (10) days after report is due to the South Carolina Tax Commission. Lease year as used herein shall be the period of one year's duration commencing on the effective day of the lease and each successive period of one full year commencing on the anniversary of said effective date. Tenant shall deliver to Landlord within days following the end of each lease year written statement signed and certified by Tenant to be a true and correct statement of the amount of gross sales during the proceeding lease year. Tenant shall at the same time pay the amount of Additional Rent due (if any) as a percentage of the excess over the amount herein stated.

☒ 3. COMMON AREA MAINTENANCE. Tenant shall pay on the first day of each month, in advance, a fee equal to the Tenant's pro rata share of the cost of maintaining common areas. Tenant's common area maintenance fee for the remaining portion of the calendar year in which this lease became effective shall be 0 52/100 _____ Dollars ($ 0.52) per month. Said fee shall be adjusted at the end of each calendar year to reflect any increase in cost during said year. Common areas include all areas used in common with the other Tenants of the property of which the Premises is a part, for the convenience or welfare of all tenants' customers collectively. Common area maintenance shall mean and include all amounts paid or incurred by Landlord for operating, managing and maintaining the Property, including the buildings, improvements and common area facilities of the Property in a manner deemed by Landlord reasonable and appropriate and for the best interest of the Property, including, without limitation, all costs and expenses of 1) operating, repairing, lighting, cleaning, painting and securing the Property and the common areas of the Property, and water and sewer charges; 2) paying all personnel employed on a part time basis or full time basis in the operation, maintenance, or repair of the Property, including the common areas; 3) removing rubbish and debris from the Property; 4) repair and maintenance of walkway, landscaping, and lighting facilities, other than such costs and expenses of a capital nature; 5) management fees paid to the property management firm to manage the Property; 6) planting, replanting and replacing flowers, shrubbery, and planters and the supplies required therefore; 7) all utilities used in connection with the operation of the common area facilities; 8) seasonal decorations, including installation and removal thereof and electricity therefore; 9) leasing or renting equipment used in connection with the operation and maintenance of the common areas; 10) fountain maintenance and repairs, when applicable; 11) security, fire and crime prevention services; 12) utility charges for the common area including without limitation, storm water, sewer and pollution control fees.

☒ 4. INSURANCE. Landlord shall keep the Premises adequately insured at a reasonable rate as indicated below (choose one):

☐ INSURANCE INCREASE. Tenant shall pay annually a sum equal to any increase in insurance premium for the year of _____ , on a pro rata basis. Presentation of copies of insurance bills shall constitute sufficient evidence of additional rent due and shall be payable within fifteen (15) days after receipt thereof. Tenant shall be charged additional rent only for the portion of the calendar year during which this lease was in effect.

☒ NET LEASE. Tenant shall pay annually the insurance premium upon presentation by the Landlord of bill on the property. These charges shall be payable by the Tenant within fifteen (15) days after receipt thereof. So long as Tenant shall not be in default, Tenant shall be responsible for the portion of the calendar year during which this lease was in effect.

☒ 5. PRORATION OF CHARGES. If the Premises described herein are less than the entire property, the increases in Monthly Base Rental adjustments, Additional Rent and all other charges required by this lease shall be determined by proration on the same ratio that the rentable floor area of the Premises bears to the rentable floor areas of the entire property. Landlord and Tenant hereby deem that the Premises contains approximately 3780 square feet of rentable area of the entire property which is approximately 7200 square feet, resulting in a percentage ratio factor of Fifty-Two Point Zero percent (52.000 %).

☐ 6. ADDITIONAL CHARGES. Any charges due Landlord by Tenant, including but not limited to, damage to Premises, legal fees, cost of default remedies, and past due charges for utilities, insurance, cleaning, maintenance and repairs, etc. or for work done on the Premises by order of Tenant, shall be considered as Additional Rent due (in addition to all other rent payable) and shall be included in any lien

for rent. In the event any documentary stamp tax, or tax levied on rental or leasing of the Premises is required, the cost shall be paid by tenant upon demand. The cost of the credit report on the Tenant which may be requested at the Landlord's option shall be paid by the Tenant.

☒ 7. LATE RENT. If rent is not paid within 5 days after due date, the Tenant is subject to a one-time late fee of Ten Point Zero (10.000 %) percent of all rents due at that time.

2. **SECURITY DEPOSIT.** Upon execution of the lease by the Tenant, the Tenant shall pay to Landlord a Security Deposit in the amount of ($ 2,800.00) Two Thousand, Eight Hundred Dollars. Any security deposit required by Landlord and paid by Tenant shall be retained as security (interest free) for the faithful performance by Tenant of all terms, covenants and conditions herein. Landlord may at any time apply said deposit or any part thereof against any default by Tenant of any of the terms, covenants and conditions of this lease. In such event, Tenant shall upon demand deposit with Landlord the amount so applied that Landlord shall have the full amount of the deposit on hand at all times during the terms of this lease. Upon the expiration of this lease the Tenant shall surrender possession of the Premises as required in paragraph 24 herein. Landlord is given permission to deduct from said security deposit the cost of any unusual cleaning or repairs to the property, upon vacating of Tenant. Security deposit is not a part of the rental and subsequently cannot be deducted from the rent of the last month of this tenancy. Security deposit or any remaining portion will be returned within 30 days after the termination of this Agreement or completion of the repairs necessitated by Tenant's misuse of the Premises. In the event the security deposit is not sufficient to pay all charges due, Tenant shall pay said charges within three days after receiving written notice from the Landlord or Agent.

3. **TENANTS UTILITIES.** Tenant shall pay all charges or bills for the utility and services used by the Tenant, EXCEPT: _____

4. **USE OF PREMISES.** Tenant agrees not to abandon or vacate the Premises and to use entire leased Property or Cafe, Restaurant, Discoteque. and for no other purposes without the express written consent of the Landlord. Pets, animals or birds may not be kept on the Premises without the landlord's permission. These Premises may not be used for sleeping quarters or apartments, immoral conduct or any illegal activity.

5. **EXAMINATION OF PREMISES.** Tenant has examined the Premises and is familiar with their present condition. Tenant, relying solely on said examination, agrees to accept Premises in their present "as is" condition, unless otherwise agreed to in writing by Tenant and Landlord.

6. **DELAY OF POSSESSION.** If Landlord is unable to deliver possession of Premises on the effective date of this lease, by reason of the holding over of a prior Tenant or for any other reason, this lease shall not be affected or impaired in any way and landlord shall not be liable to Tenant for any loss or damage resulting therefrom. The effective date of this lease however, shall not begin until the delivery of possession. If Landlord, however, is unable to deliver possession of the Premises to Tenant by _____ , and if Tenant in fact shall not have accepted possession of the Premises, and if Tenant shall not be in default, Tenant shall have the right to cancel this lease upon written notice delivered to Landlord and upon such cancellation Landlord and Tenant shall each be released and discharged from all liability under this lease. In such case any deposit or prepaid rent shall be promptly returned to Tenant.

7. **TENANT'S PARKING.** Parking of vehicles owned or operated by Tenant or Tenant's employees is hereby limited, restricted or prohibited, as follows: Tenant may park any where in parking lot around building.

8. **LIABILITY INSURANCE.** Tenant shall not carry any stock of goods or do anything in or about the Premises which will in any way restrict or invalidate any insurance coverage of the Premises. Tenant agrees to pay upon demand as

AS **TENANT, [___] TENANT, AND [___] LANDLORD HAVE READ THIS PAGE.**

additional rent any increase in premiums of insurance carried by the Landlord on the Premises resulting from the Tenant's occupancy or improvements. Tenant shall keep in full force and effect, at Tenant's expense, insurance for plate glass, personal property, trade fixtures, and property damages, as well as a public liability policy in which both Tenant and Landlord shall be named as the insured with the following minimum coverage:
Single Limit $ 1,000,000.00 Aggregate $ 2,000,000.00 .
A certificate of insurance showing the Landlord and Landlord's Agent as an additional insured shall be provided to the landlord not later than the commencement date of this lease and prior to the expiration of such insurance policy during the term of this lease.

9. **MAINTENANCE AND REPAIRS.** Landlord shall repair and maintain the foundation, roof, outer walls and structural members of the Premises. Tenant shall, at Tenant's sole expense make all other repairs necessary to maintain the Premises, both interior and exterior, ordinary and extraordinary including window glass, plate glass, storefronts, doors, windows, screens, awnings, locks, keys, weather stripping and thresholds, as well as all interior walls, floors, ceilings, and floor coverings. Tenant's responsibility to maintain the Premises shall also include the servicing, repair and maintenance of plumbing, electrical, heating, ventilating and air conditioning systems, including all pipes, wiring, fixtures, filters, equipment, machinery, boilers, furnaces, compressors and appliances, and for the replacement of any of the aforementioned systems if their failure is due to Tenant's neglect. Notwithstanding anything contained in this Lease to the contrary, during the term of this Lease, Landlord shall warrant the major components of the heating, ventilating, and air conditioning (HVAC) equipment servicing the Premises, to include the compressors, condensing units, and air handlers, which warranty shall be contingent upon Tenant maintaining the HVAC equipment and ductwork by entering into a contract with a reputable HVAC services company approved in writing by Landlord. Said contract shall include a minimum of monthly filter changes, routine testing for Freon leakage, cleaning, and other customary periodic maintenance. In the event a major component shall need replacement and Tenant is unable to provide written documentation to the Landlord of the required maintenance as set for in this paragraph, Tenant shall be responsible for the replacement of said component at Tenant's sole cost and expense. Tenant shall also repair and be responsible for any caused by stoppage, breakage, leakage, overflow, discharge or freezing of plumbing pipes, soil lines, or fixtures. If any part of the Premises is damaged by the Tenant, or Tenant's employees, agents or invitees, Tenant shall provide Landlord with immediate written notification of all damages to the property. After notification and approval of the Landlord, repairs shall be made promptly at Tenant's expense so as to restore said Premises to its previous condition. If Tenant refuses or neglects to commence necessary repairs within ten (10) days after written demand, or does not complete such repairs within a reasonable time thereafter, Landlord may make said repairs without liability to Tenant for any loss or damage that may accrue to Tenant's stock, business or fixtures by reason thereof and if Landlord makes such repairs, Tenant shall pay to Landlord, on demand, as Additional Rent, the cost thereof. Tenant's failure to pay shall constitute a default of this lease. Repairs that are the Landlord's responsibility shall be made within a reasonable time after written notice from the Tenant. Tenant's failure to give or unreasonable delay in giving notice of needed repairs or defects shall make Tenant liable for any loss or damage resulting from delay of needed repairs.

10. **REGULATIONS AND SANITATION.** Tenant shall keep the Premises clean, safe, sanitary, and in compliance with laws, ordinances and requirements of any legally constituted public authority. Tenant shall keep broom clean all areas in and around Premises that are not included in Common Area Maintenance, such as front sidewalks and area behind building. Cleaning includes removing of any trash or refuse deposited on the lease Premises or adjacent public area by Tenant, Tenant's customers', invitees, or agents. In the event of non-compliance by Tenant, Landlord shall have the right to have said areas cleaned, trash and refuse removed and charge the expense to Tenant as Additional Rent which shall be due and payable upon demand. Nonpayment of which shall constitute default of this Agreement. Tenant shall not allow loitering on Premises. Tenant shall employ if Landlord determines it is necessary, a reputable pest extermination company at regular intervals.

11. **ALTERATIONS.** Tenant shall make no alterations, additions, improvements, or rewiring in or to the Premises without the written consent of Landlord. All additions, or improvements to the Premises including carpeting, tile, other floor covering, wall covering, ceiling tile, etc., made with or without Landlord's written consent shall become part of the Premises, and the property of Landlord upon installation. Trade fixtures and office furniture shall be installed so as to be readily removable without injury to the Premises and any injury caused by said removal shall be repaired forthwith at Tenant's expense. Said trade fixtures shall be removed from the Premises before the end of this lease or shall become part of the Premises and the property of Landlord. Tenant shall not install or maintain any equipment, partitions, furniture, etc. which the weight or operation thereof would tend to injure, or be detrimental to the Premises or would unreasonably annoy or disturb other Tenants.

12. **ASSIGNMENT OR SUBLEASE.** Tenant shall not, without written consent of Landlord, in each case, assign, transfer, mortgage, pledge or otherwise encumber or dispose of this lease, or sublet the Premises or any part thereof or permit the Premises to be occupied by other persons. Such consent shall not be unreasonably withheld, conditioned, or delayed. If this lease be assigned, or if the Premises or any part thereof be sublet or occupied by any other person, firm, office or corporation with or without written permission of Landlord, it will not relieve Tenant of any obligations under the terms of this lease, and if sublet, assigned or occupied without the Landlord's permission, this lease may, at the option of the Landlord, be terminated by a seven day written notice. In the event Tenant shall sublease the Premises in accordance herewith for rentals in excess of those rentals payable hereunder, Tenant shall pay to Landlord monthly in advance as Additional Rent hereunder, one-half of all such excess rent. Any proposed assignee or sublessee that proposes to assume Tenant's obligations hereunder shall execute a satisfactory assumption or sublease agreement before consent shall be given. Other provisions of this Paragraph to the contrary notwithstanding, Landlord shall have the right in its absolute and sole discretion to withhold consent to any sublease or assignment if Tenant shall be in default or breach of this Agreement or if the proposed assignee or sublessee or its business will cause Landlord to incur any costs of whatever kind or nature.

13. **SIGNS OR AWNINGS.** Tenant shall place no signs, notices, pictures, or advertising matter upon the exterior of the lease Premises except with the written consent of the Landlord. Any and all signs placed on the Premises by Tenant shall be maintained in compliance with rules and regulations governing such signs. The Tenant shall be responsible to Landlord for any damages by installation, use, maintenance or removal of said signs. Any electrical service needed for signs shall be installed at the Tenant's expense. Tenant shall, at Tenant's expense, remove signs at the expiration of the Agreement.

14. **WAIVER OF RIGHTS.** No failure of Landlord to exercise any power given Landlord hereunder, or to insist upon Tenant's strict compliance with Tenant's obligation hereunder and no custom or practice of the parties at variance with the terms hereof shall constitute a waiver of Landlord's right to demand exact compliance with the terms of this Agreement at a future time. The rights and remedies created by this Agreement are cumulative and the use of one remedy shall not be taken to exclude the right to the use of another.

15. **RULES AND REGULATIONS.** Landlord reserves the right at any time to make further rules and regulations as in Landlord's judgment that may be necessary for the safety, care, appearance, and cleanliness of the Premises and the entire property, and the preservation of good order herein, and such other rules and regulations shall be binding upon the parties hereto with the same force and effect as if they had been contained herein at the time of execution hereof.

16. **RIGHT OF ENTRY.** Landlord, without being liable for trespass or damages, shall have the right to enter Premises during reasonable hours, with reasonable prior notice, to examine same or to make repairs, additions, or alterations as Landlord may deem necessary for the safety, comfort, appearance, or preservation thereof or to exhibit said Premises. Entry shall also be allowed to post "FOR RENT" notice, during the 90 days before the expiration of this lease. Said right of entry shall likewise exist for the purpose of removing placards, signs, fixtures, alterations or additions which do not conform to this Agreement. In accordance with this right, Tenant shall give Landlord a key to any and all locks, security systems and burglar alarms. Tenant shall not change or install new locks or security systems without the written consent of Landlord.

17. **LIENS.** Tenant shall not create or allow to be created any liens for labor or materials against Landlord's interest in the Premises. All persons contracting with the Tenant for the erection, installation, alteration, repair or demolition of any building or other improvements on the Premises, and all material suppliers, contractors, mechanics, and laborers are hereby charged with notice that they must look to the Tenant and to the Tenant's interests only in the Premises to secure the payment of any bill for work done or material furnished during the rental period created by this Agreement. In the event that liens are placed on record against the Premises by contractors, mechanics, laborers, material suppliers, etc., of Tenant it will constitute a default of this Agreement. The Tenant shall indemnify, hold harmless, and defend the Landlord from any liens and encumbrances arising out of any work performed or materials furnished by or at the direction of the Tenant. Such indemnity shall include, without limitation, all attorney's fees and costs incurred by the Landlord due to the filing of such mechanic's lien or notice thereof. In the event that the Tenant, within twenty (20) days following the imposition of any such lien, shall not cause such lien to be released of record by payment or posting of a proper bond, in addition to all other remedies provided herein and by law, the Landlord shall have the right (but not the obligation) to cause the same to be released by such means as it shall deem proper, including bonding or payment of the claim giving rise to such lien. All such sums paid by the Landlord and all expenses incurred by it in connection therewith, including attorney's fees and costs shall be payable to the Landlord by the Tenant on demand with interest at the rate of eighteen (18%) percent per annum.

[AS] TENANT, [___] TENANT, AND [___] LANDLORD HAVE READ THIS PAGE.

18. **DAMAGE OR DESTRUCTION OF PREMISES.** If Premises are totally destroyed by fire or other casualty, this lease shall terminate as of the date of such destruction and rental shall be accounted for as between Landlord and Tenant as of that date. If Premises are damaged but not wholly destroyed by fire or other casualty, rental shall abate in such proportion as use of Premises has been lost to the Tenant. Landlord shall restore Premises to substantially the same condition as prior to damage as speedily as practicable, whereupon full rental shall commence. Insurance proceeds, if paid to Tenant, shall be assigned to Landlord to restore Premises and replace any covered contents owned by Landlord.

19. **DAMAGE TO PERSONAL PROPERTY.** All personal property, merchandise, fixtures and equipment placed or moved into the Premises shall be at the risk of Tenant or the owners thereof and Landlord shall not be liable for any damages, loss or theft of said personal property, merchandise, fixtures, or equipment, from any cause whatsoever.

20. **CONDEMNATION.** If the whole of the Premises, or such portion thereof as will make said Premises unusable for the purpose herein leased, be condemned by any legally constituted authority, this lease shall terminate on the date when possession thereof is taken by public authorities, and rental shall be accounted for as between Landlord and Tenant as of that date. Such termination, however, shall be without prejudice to the rights of either Landlord or Tenant to recover from the public authority compensation for damage caused by condemnation. Neither the Tenant nor Landlord shall have any rights in any award made to the other by any condemnation authority. In the event only such portion of the Premises is acquired by condemnation as will leave the remaining Premises, after alteration and repairs, in condition suitable for use by Tenant, the monthly rental payments from the day of such acquisition to the end of the original or any extended term of this lease shall be reduced in proportion to the resulting loss of use of Premises by Tenant. In the event of such partial acquisition and reduction in rent, Landlord shall make promptly at Landlord's expense, all necessary alterations and repairs that shall be required, to restore the Premises to a safe and usable condition.

21. **INDEMNITY AND LIABILITY.** Tenant shall indemnify and save Landlord harmless from any and all claims, damages, costs and expenses, including reasonable attorney's fees, arising from the management of the business conducted by Tenant on the Premises. Landlord shall not be liable, and Tenant waives all claims for damage to person or property sustained by Tenant, its employees or agents, resulting from the condition of the Premises, or any equipment, or, such as may result from any accident in or about the Premises or which may result directly or indirectly from any act of neglect of any other Tenant of the property of which the Premises is a part.

22. **HOLDOVER.** Tenant shall surrender to Landlord, at the end of the term of this lease or upon cancellation of this ease, said Premises broom clean and in as good condition as the Premises were at the beginning of the term of this lease, ordinary wear and tear and damage by fire and windstorm or other acts of God excepted, or Tenant will pay to Landlord all damages that Landlord may suffer because of Tenant's failure to do so. Tenant will indemnify and save Landlord harmless from and against all claims made by any succeeding Tenant of said Premises against Landlord because of delay in delivering possession of Premises, so far as such delay is occasioned by failure of Tenant to so surrender Premises. If Tenant remains in possession of the Premises or any part thereof after the expiration of the Agreement, such holdover places the Tenant in default and the Monthly Base Rental shall be increased to one hundred fifty percent (150%) of the last month's Monthly Base Rental unless given a month to month tenancy in writing from the Landlord.

23. **EFFECTIVE DATE OF LEASE.** This Agreement shall become effective as a binding agreement only upon the execution and delivery thereof by both Landlord and Tenant. If this Agreement is signed by one party and submitted to the other party, then it shall constitute an offer to lease which is subject to revocation at any time prior to execution by the other party and delivery of a fully executed copy of the submitting party.

24. **NOTICES.** Tenant hereby appoints as Tenant's agent to receive service of all notices required under this Agreement as well as all dispossessory distraint notices, the person in charge of Premises or occupying said Premises, at the time notice is delivered. A copy of all notices under this Agreement shall also be sent via certified mail, return receipt requested, or via recognized overnight delivery company, to Tenant's and Landlord's last known address as follows (or to such other address as either party may specify by written notice):

Tenant Address: 28 Lighthouse Dr.
Goose Creek, SC 29445

Landlord Address: 2650 Holcomb Bridge, Suite 630
Alpharetta, GA 30022

[AS] TENANT, [___] TENANT, AND [___] LANDLORD HAVE READ THIS PAGE.

25. **BANKRUPTCY.** If Tenant shall be adjudicated bankrupt or as insolvent or take the benefit of any Federal reorganization or make a general assignment or take the benefit of any insolvent law, or if a Trustee in bankruptcy or a receiver be appointed or elected for Tenant, under Federal or State law, this Agreement at the option of the Landlord shall expire and end seven (7) days after Landlord gives Tenant written notice, UNLESS, the Tenant's Trustee immediately cures any default of Tenant hereunder and provides (in compliance with Federal and State laws) adequate assurance of future performance of Tenant's obligations hereunder.

26. **BEYOND LANDLORD'S CONTROL.** None of the acts, promises, covenants, or obligations on the part of the Tenant to be kept, performed or not performed as the case may be, nor the obligation of the Tenant to pay Monthly Base Rental. Additional Rent or other charges or payments shall be in anywise waived, excused or affected by reason of the Landlord being unable at any time during the term of this Agreement, to supply, or to delay in supplying heat, light, elevator service or any other service expressed or implied on the part of the Landlord to be supplied; or by reason of the Landlord being unable to make any alteration, repairs, or decorations, or to supply any equipment or fixtures, or any other promise, covenant, or obligations on the part of the Landlord to be performed, if the Landlord's inability or delay is caused by circumstances or events beyond the Landlord's control.

27. **KEYS.** Landlord shall provide Tenant with one key per lock, and the Tenant is responsible for accounting for all keys provided or duplicated and shall return all keys of Premises to the Landlord upon termination or cancellation of this Agreement and/or Tenant vacating said Premises. Landlord shall have the right, if in the Landlord's sole judgment it is necessary, to require the Tenant at Tenant's expense to replace locks, and to supply Landlord with one key to the new locks. The Landlord shall retain a master key or pass key to the Premises, including all security locks and systems. Tenant shall not change or install new locks or security systems without written approval from Landlord.

28. **ESTOPPEL.** Tenant shall from time to time, within ten days following written notice from Landlord, execute, acknowledge and deliver to the Landlord a written statement certifying that this Agreement is in full force and effect. This statement should also state whether or not the Landlord is in default in performance of any covenant or condition of this Agreement or other such reasonable terms required by the Landlord, purchaser, or lender for either. The failure of the Tenant to execute, acknowledge and deliver to the Landlord a statement in accordance with this covenant shall constitute an acknowledgment by the Tenant that this lease is unmodified and in full force and effect, and shall constitute a waiver of any defaults by the Landlord which may have existed prior to the date of such notice.

29. **PEACEFUL POSSESSION.** Subject to the terms, covenants and conditions of this lease, the Tenant shall have, hold and enjoy possession of the Premises, subject to the rights of the holders of any mortgage which now covers said Premises or which may hereafter be placed on Premises by Landlord. Tenant's rights are also subject to any underlying lease now or later covering the entire property of which the leased property is a part. Tenant shall execute any necessary lease subordination agreement at the Landlord's request.

30. **DEFAULT.** If Tenant fails to pay Monthly Base Rental including Additional Rent on or before the due dates as herein stated (TIME IS OF THE ESSENCE) this Agreement shall be in default. If Tenant fails to cure such default within five (5) days after written notice from Landlord; or if Tenant shall be in default in performing any of the terms, covenants and conditions of this Agreement, other than the provision requiring the payment of Monthly Base Rental and Additional Rent, and fails to cure such default within thirty (30) days after the receipt of written notice of default from Landlord; or if Premises shall be abandoned or deserted for fifteen (15) days, or if this Agreement is assigned to any other person, firm, office or corporation, without the permission of Landlord as required in Paragraph 15 herein, this lease at the Landlord's option shall expire and terminate seven (7) days after Landlord delivers written notice to Tenant of such condition or default and Tenant shall immediately quit and surrender said Premises to Landlord. In the event of any such default or breach of performance, the Landlord without any further notice or demand of any kind to the Tenant, may terminate this lease and re-enter and forthwith repossess the entire Premises and without being liable for trespass or damage shall re-let, lease or demise the Premises to another Tenant without any hindrance or prejudice to Landlord's right to distrain for any past due rent, Additional Rent, and rent from the time of such default or termination until the Premises were leased or rented to another Tenant.

31. **ASSIGNMENT OF CHATTELS.** Tenant hereby pledges and assigns to Landlord all the furniture, fixtures, goods, equipment and chattels of Tenant which shall or may be brought or put on said Premises as security for the payment of said rent, and tenant agrees that said lien may be enforced by distraint or foreclosure, at the election of Landlord. It is understood and agreed that any merchandise, fixtures, furniture, or equipment left in the Premises when Tenant vacates

shall be deemed to have been abandoned by Tenant and by such abandonment, Tenant relinquishes any right or interest therein and Landlord is authorized to sell, dispose of or destroy same.

32. **ATTORNEY'S FEE.** In the event Landlord successfully defends any action by the Tenant, or if it is necessary for Landlord to employ an attorney for the collection of rent or any other sum due hereunder, or to enforce any covenant of is lease, or the termination of this lease, or for the possession of the Premises or any part thereof the Tenant shall pay all costs, including reasonable attorney's fees.

33. **AGENT.** Tenant acknowledges that I Martinez/Boulevard Company is the leasing/managing agent for the Landlord of the Premises. Tenant shall pay all rent payable under this lease to said agent. The right to collect said rentals shall be governed by the written agreement between Landlord and agent for the management of the Premises and shall terminate with the expiration of said management agreement or any renewal thereof.

34. ***BROKER LIABILITY LIMITATION.*** *Parties agree Brokers provided Parties with benefits, services, assistance, and value in bringing about this Contract. In consideration and recognition of the risks, rewards, compensation and benefits arising from this transaction to Brokers, Parties each agree that they shall pay Brokers' attorneys fees and that Brokers, shall not be liable to either Party or both, either jointly, severally or individually, in an amount exceeding that Broker's Compensation by reason of any act or omission, including negligence, misrepresentation, errors and omissions, or breach of undertaking, except for intentional or willful acts. This limitation shall apply regardless of the cause of action or legal theory asserted against either Broker, unless the claim is for an intentional or willful act. This limitation of liability shall apply to all claims, losses, costs, damages or claimed expenses of any nature from any cause(s), except intentional or willful acts, so that the total liability of either Broker shall not exceed the amount set forth herein. Parties will indemnify and hold harmless and pay attorneys fees for Brokers from beach of contract, any negligent or intentional acts or omissions by any Parties, Inspectors, Professionals, Service Providers, Contractors, etc. including any introduced or recommended by Brokers. Parties each agree that there is valid and sufficient consideration for this limitation of liability and that Brokers are the intended third-party beneficiaries of this provision.*

35. **SUBORDINATION, ATTORNMENT, AND NON-DISTURBANCE.** Tenant agrees that this Agreement shall be subject and subordinate to any mortgages, deeds of trust or any ground lease now or hereafter placed upon the Premises and to all modifications thereto, and to all present and future advances made with respect to any such mortgage or deed of trust; provided however, that such mortgagee or ground lessor agrees not to disturb Tenant in its possession of the premises so long as Tenant shall not be in breach or default under any of the terms and conditions of this Agreement. Tenant agrees to attorn to the mortgagee, trustee, or beneficiary under any such mortgage or deed of trust, and to the purchaser at a sale pursuant to the foreclosing thereof, and to the lessor in the event of a termination of any such ground lease.

36. **DEFINITIONS.** "Landlord" as used in this Agreement shall include the owner or owners of the property and/or the aforementioned managing agent as well as the Landlord's heirs, representatives, assigns and successors in title to remises. "Tenant" shall include Tenant, Tenant's heirs and representatives, and if this lease shall be assigned or sublet, shall include also Tenant assignees or subleases, as to Premises covered by such assignment or sublease. "Agent" shall include agent, agent's successors, assigns, heirs and representatives. "Landlord," "Tenant," and "Agent," including male and female, singular and plural, corporation, partnership or individual, as may fit the particular parties. "Property" is defined as the land, lots, building improvements, and common areas as may be further defined herein, in which the Premises is included.

37. **ENVIRONMENTAL MATTERS.** Tenant represents, warrants and covenants to Landlord throughout the Term of this Agreement as follows that Tenant is and agrees to remain in compliance with all applicable federal, state and local laws relating to protection of the public health, welfare, and the environment ("Environmental Law") with respect to Tenant's use and occupancy of the Premises. Tenant agrees to cause all of its employees, agents, contractors, sublessees, assignees, and any other persons occupying or present on the Premises ("Occupants") to comply with all Environmental Laws applicable to their activities in and around the Premises.

38. **AMERICANS WITH DISABILITIES ACT.** Any other provision of this Agreement notwithstanding, the parties hereby agree that the Premises may be subject to the terms and conditions of the Americans with Disabilities Act of 1990 (hereinafter the "ADA"). The parties further agree and acknowledge that it shall be the sole responsibility of Tenant to comply with any and all provisions of the ADA, as such compliance may be required to operate the Premises. Tenant further agrees to indemnify, depend and hold Landlord harmless against any claims, which may arise out of Tenant's

failure to comply with the ADA. Such indemnification shall include, but not necessarily be limited to reasonable attorney's fees, court costs and judgments as a result of said claims. Within ten (10) days after receipt, Tenant shall advise the Landlord in writing and provide with copies of (as applicable), any notices alleging violation of the Americans with Disabilities Act of 1990 ("ADA") relating to any portion of the Property of the Premises, any claims made or threatened in writing regarding noncompliance with the ADA and relating to any portion of the Property or of the Premises, or any governmental or regulatory actions or investigations instituted or threatened regarding noncompliance with the ADA and relating to any portion of the Property or of the Premises.

39. **SPECIAL STIPULATIONS.** Insofar as the following stipulations conflict with any of the provisions herein, the following stipulations shall control (use addendum if necessary): NNN or additional expenses will be: Taxes: $1.20 psf $378.00, Insurance: $.26 psf or $81.90, CAM $0.52 psf or $163.80

40. **SOUTH CAROLINA LAW TO GOVERN.** Tenant and Landlord agree that South Carolina law will govern the interpretation and enforcement of this Agreement.

41. **ENTIRE AGREEMENT.** This lease contains the entire agreement between the parties hereto and all previous negotiations leading thereto, and it may be modified only by a dated written agreement signed by both Landlord and Tenant. No surrender of the Premises or of the remainder of the term of this lease shall be valid unless accepted by Landlord in writing. TIME IS OF THE ESSENCE WITH REGARD TO ALL TERMS AND CONDITIONS IN THIS AGREEMENT.

42. **FACSIMILE.** The parties agree that the offer, any counteroffer and/or acceptance of any offer or counteroffer may be communicated by use of a fax and the signatures, initials, and handwritten or typewritten modifications to any of the foregoing shall be deemed to be valid and binding upon the parties as if the original signatures, initials and handwritten or typewritten modifications were present on the documents in the handwriting of each party.

43. **MEGAN'S LAW.** The Tenant and Landlord agree that the Property Manager or Real Estate Broker representing Tenant or Landlord and all affiliated agents are not responsible for obtaining or disclosing any information contained in the South Carolina Sex Offender Registry. The Tenant and Landlord agree that no course of action may be brought against the Property Manager or Real Estate Broker representing Tenant or Landlord and all affiliated agents for failure to obtain or disclose any information contained in the South Carolina Sex Offender Registry. The Tenant agrees that the Tenant has the sole responsibility to obtain any such information. The Tenant understands that Sex Offender Registry information may be obtained from the local sheriff's department or other appropriate law enforcement officials.

44. **NON-RELIANCE CLAUSE.** Both Tenant and Landlord hereby acknowledge that they have not received or relied upon or could have relied upon any statements or representations or promises or agreements or inducements by either Broker or their agents which are not expressly stipulated herein. If not contained herein, such statements, representations, promises, or agreements shall be of no force or effect. This general non-reliance clause shall not prevent recovery in tort for fraud or negligent misrepresentation or intentional misrepresentation unless specific non-reliance language is included in this agreement. This is a non-reliance clause and is neither a merger clause nor an extension of a merger clause. The parties execute this agreement freely and voluntarily without reliance upon any statements or representations by parties or agents except as set forth herein. Parties have fully read and understand this Agreement and the meaning of its provisions. Parties are legally competent to enter into this agreement and to fully accept responsibility. Parties have been advised to consult with counsel before entering into this agreement and have had the opportunity to do so.

THE UNDERSIGNED HEREBY WARRANT THAT THEY OWN THE PROPERTY AND/OR HAVE THE AUTHORITY TO EXECUTE THIS AGREEMENT. THIS IS A LEGALLY BINDING AGREEMENT. OWNER SHALL SEEK FURTHER ASSISTANCE IF THE CONTENTS ARE NOT UNDERSTOOD. OWNER ACKNOWLEDGES RECEIPT OF A COPY OF THIS AGREEMENT. OWNER AGREES TO RECEIVE COMMUNICATIONS FROM BROKER AT THE EMAIL ADDRESS, PHONE AND FAX NUMBER LISTED BELOW.

[AS] **TENANT, [___] TENANT, AND [___] LANDLORD HAVE READ THIS PAGE.**

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IN WITNESS WHEREOF, this agreement has been duly executed by the parties.

12-22-15

Tenant Aracelis Santos Date Witness to Tenant

Tenant's Email Address: 28 Light House DR Goose creek SC 29445

Phone: 843-460-5934 Fax: _____

Aracelis Santos

Tenant Date Witness to Tenant

Tenant's Email Address: _____

Phone: _____ Fax: _____

Landlord Date Witness to Landlord

Landlord's Email Address: _____

Phone: _____ Fax: _____

LANDLORD'S AGENT AND COMPANY _____

TENANT'S AGENT AND COMPANY _____

GUARANTEE

As an inducement and, thus, a further consideration for the Landlord entering into this Agreement with the Tenant, the undersigned (jointly and severally, if more than one) hereby guarantees full performance by the Tenant and its heirs, successors, or assigns of all of the terms and conditions of the Agreement. The Landlord is not required to provide the Guarantor(s) with any notice provided for in the Agreement. In addition, this Guarantee is not waived by any delay that the Landlord has permitted the Tenant in satisfying its obligations under the Agreement. This Guarantee runs to the Guarantor's heirs, successors, and assigns and ensures to the benefit of the Landlord and its successors, and assigns. The Landlord and Tenant may agree to a modification of the Agreement without the approval of the Guarantor(s), provided that the obligation of the Guarantor(s) is not increased beyond the financial conditions contained in the Lease. This is a guarantee of payment and performance and not merely of collection of any term or condition of the Agreement that requires the Tenant to pay the Landlord any sum of money.

Aracelis Santos

GUARANTOR Date Witness to GUARANTOR

GUARANTOR Date Witness to GUARANTOR

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COMMERCIAL LEASE

In consideration of the covenants herein contained, Aracelis Santos, hereinafter called "Tenant" and Latino Mix, Landlord, or Agent for the Landlord, hereinafter called "Landlord", agree as follows:

For the period of time beginning on August 1, 2016, and ending at midnight on November 30, 2018, Landlord hereby grants to Tenant the sole and exclusive right to lease the real property known as:

Lot _____ Block _____ Section _____ Subdivision _____

Address 5901 Loftis Rd

Tax Map # 265-15-02-068 City Hanahan Zip 29410-2663

County of Berkeley, State of South Carolina.

THE ☐ LANDLORD ☐ TENANT IS LICENSED UNDER THE LAWS OF SOUTH CAROLINA AS A REAL ESTATE LICENSEE.

1. **RENT.** Tenant shall pay to the Landlord, a Monthly Base Rental and Additional Rent as follows:
   (a) MONTHLY BASE RENTAL. Tenant shall pay a Monthly Base Rental to Landlord for each month during the term of this lease or any renewal thereof, in advance on or before the 1st day of each month during the term of this Agreement. The amount of the Monthly Base Rental for the first year of this Agreement shall be One Thousand, One Hundred Twelve 44/100 Dollars ($ 1,112.44).
   (b) The rental for the first month of this lease shall be paid at the date of execution thereof. The Monthly Base Rental shall be increased as follows: 3% annual increase. Tenant has one 2 year option to renew.Additional expenses are included in base rent.
   (c) ADDITIONAL RENT. In addition to the Monthly Base Rental and any accumulative adjustments, Tenant shall pay Additional Rent as indicated herein below (check all that apply):
      ☐ 1. PROPERTY TAXES (choose one):
         ☐ TAX INCREASE. Tenant shall pay annually a sum equal to any increase in real estate taxes (ad valorem, special assessments and any other government charges to include any solid waste disposal user fees) over those assessed for the year of _____, on a pro rata basis. Presentation of copies of tax bills shall constitute sufficient evidence of additional rent due and shall be payable within fifteen (15) days after receipt thereof. Tenant shall be charged additional rent only for the portion of the calendar year during which this lease was in effect.

         ☐ NET LEASE. Tenant shall pay annually the real estate taxes (ad valorem, special assessments and any other government charges) upon presentation by the Landlord of tax bills on the property. These charges shall be payable by the Tenant within fifteen (15) days after receipt thereof. So long as Tenant shall not be in default, Tenant shall be responsible for the portion of the calendar year during which this lease was in effect.

      ☐ 2. PERCENTAGE OF GROSS SALES. Tenant shall pay annually a sum equal to _____ % of gross sales, as herein defined, in excess of _____ Dollars, ($ _____), in any lease year. Gross sales as used herein shall be the amount of the gross sales as indicated on the Tenant's South Carolina Tax Report (Form ST-3). Tenant shall deliver to Landlord a certified copy of each

[___] TENANT, [___] TENANT, AND [___] LANDLORD HAVE READ THIS PAGE.

The Boulevard Company, LLC, 35 Broad Street Charleston, SC 29401 Phone: (843)619-7816 Fax:
Isabelle Martinez

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monthly report within ten (10) days after report is due to the South Carolina Tax Commission. Lease year as used herein shall be the period of one year's duration commencing on the effective day of the lease and each successive period of one full year commencing on the anniversary of said effective date. Tenant shall deliver to Landlord within days following the end of each lease year written statement signed and certified by Tenant to be a true and correct statement of the amount of gross sales during the proceeding lease year. Tenant shall at the same time pay the amount of Additional Rent due (if any) as a percentage of the excess over the amount herein stated.

☐ 3. COMMON AREA MAINTENANCE. Tenant shall pay on the first day of each month, in advance, a fee equal to the Tenant's pro rata share of the cost of maintaining common areas. Tenant's common area maintenance fee for the remaining portion of the calendar year in which this lease became effective shall be _____ _____ Dollars ($ _____) per month. Said fee shall be adjusted at the end of each calendar year to reflect any increase in cost during said year. Common areas include all areas used in common with the other Tenants of the property of which the Premises is a part, for the convenience or welfare of all tenants' customers collectively. Common area maintenance shall mean and include all amounts paid or incurred by Landlord for operating, managing and maintaining the Property, including the buildings, improvements and common area facilities of the Property in a manner deemed by Landlord reasonable and appropriate and for the best interest of the Property, including, without limitation, all costs and expenses of 1) operating, repairing, lighting, cleaning, painting and securing the Property and the common areas of the Property, and water and sewer charges; 2) paying all personnel employed on a part time basis or full time basis in the operation, maintenance, or repair of the Property, including the common areas; 3) removing rubbish and debris from the Property; 4) repair and maintenance of walkway, landscaping, and lighting facilities, other than such costs and expenses of a capital nature; 5) management fees paid to the property management firm to manage the Property; 6) planting, replanting and replacing flowers, shrubbery, and planters and the supplies required therefore; 7) all utilities used in connection with the operation of the common area facilities; 8) seasonal decorations, including installation and removal thereof and electricity therefore; 9) leasing or renting equipment used in connection with the operation and maintenance of the common areas; 10) fountain maintenance and repairs, when applicable; 11) security, fire and crime prevention services; 12) utility charges for the common area including without limitation, storm water, sewer and pollution control fees.

☐ 4. INSURANCE. Landlord shall keep the Premises adequately insured at a reasonable rate as indicated below (choose one):

☐ INSURANCE INCREASE. Tenant shall pay annually a sum equal to any increase in insurance premium for the year of _____ , on a pro rata basis. Presentation of copies of insurance bills shall constitute sufficient evidence of additional rent due and shall be payable within fifteen (15) days after receipt thereof. Tenant shall be charged additional rent only for the portion of the calendar year during which this lease was in effect.

☐ NET LEASE. Tenant shall pay annually the insurance premium upon presentation by the Landlord of bill on the property. These charges shall be payable by the Tenant within fifteen (15) days after receipt thereof. So long as Tenant shall not be in default, Tenant shall be responsible for the portion of the calendar year during which this lease was in effect.

☐ 5. PRORATION OF CHARGES. If the Premises described herein are less than the entire property, the increases in Monthly Base Rental adjustments, Additional Rent and all other charges required by this lease shall be determined by proration on the same ratio that the rentable floor area of the Premises bears to the rentable floor areas of the entire property. Landlord and Tenant hereby deem that the Premises contains approximately _____ square feet of rentable area of the entire property which is approximately _____ square feet, resulting in a percentage ratio factor of _____ percent (_____ %).

☒ 6. ADDITIONAL CHARGES. Any charges due Landlord by Tenant, including but not limited to, damage to Premises, legal fees, cost of default remedies, and past due charges for utilities, insurance, cleaning, maintenance and repairs, etc. or for work done on the Premises by order of Tenant, shall be considered as Additional Rent due (in addition to all other rent payable) and shall be included in any lien

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for rent. In the event any documentary stamp tax, or tax levied on rental or leasing of the Premises is required, the cost shall be paid by tenant upon demand. The cost of the credit report on the Tenant which may be requested at the Landlord's option shall be paid by the Tenant.

☒ 7. LATE RENT. If rent is not paid within 5 days after due date, the Tenant is subject to a one-time late fee of Five Point Zero (5.000 %) percent of all rents due at that time.

2. **SECURITY DEPOSIT.** Upon execution of the lease by the Tenant, the Tenant shall pay to Landlord a Security Deposit in the amount of ($) Dollars. Any security deposit required by Landlord and paid by Tenant shall be retained as security (interest free) for the faithful performance by Tenant of all terms, covenants and conditions herein. Landlord may at any time apply said deposit or any part thereof against any default by Tenant of any of the terms, covenants and conditions of this lease. In such event, Tenant shall upon demand deposit with Landlord the amount so applied that Landlord shall have the full amount of the deposit on hand at all times during the terms of this lease. Upon the expiration of this lease the Tenant shall surrender possession of the Premises as required in paragraph 24 herein. Landlord is given permission to deduct from said security deposit the cost of any unusual cleaning or repairs to the property, upon vacating of Tenant. Security deposit is not a part of the rental and subsequently cannot be deducted from the rent of the last month of this tenancy. Security deposit or any remaining portion will be returned within 30 days after the termination of this Agreement or completion of the repairs necessitated by Tenant's misuse of the Premises. In the event the security deposit is not sufficient to pay all charges due, Tenant shall pay said charges within three days after receiving written notice from the Landlord or Agent.

3. **TENANTS UTILITIES.** Tenant shall pay all charges or bills for the utility and services used by the Tenant, EXCEPT: Tenant will pay for electricity and water.

4. **USE OF PREMISES.** Tenant agrees not to abandon or vacate the Premises and to use entire leased Property for Convenience Store. and for no other purposes without the express written consent of the Landlord. Pets, animals or birds may not be kept on the Premises without the landlord's permission. These Premises may not be used for sleeping quarters or apartments, immoral conduct or any illegal activity.

5. **EXAMINATION OF PREMISES.** Tenant has examined the Premises and is familiar with their present condition. Tenant, relying solely on said examination, agrees to accept Premises in their present "as is" condition, unless otherwise agreed to in writing by Tenant and Landlord.

6. **DELAY OF POSSESSION.** If Landlord is unable to deliver possession of Premises on the effective date of this lease, by reason of the holding over of a prior Tenant or for any other reason, this lease shall not be affected or impaired in any way and landlord shall not be liable to Tenant for any loss or damage resulting therefrom. The effective date of this lease however, shall not begin until the delivery of possession. If Landlord, however, is unable to deliver possession of the Premises to Tenant by , and if Tenant in fact shall not have accepted possession of the Premises, and if Tenant shall not be in default, Tenant shall have the right to cancel this lease upon written notice delivered to Landlord and upon such cancellation Landlord and Tenant shall each be released and discharged from all liability under this lease. In such case any deposit or prepaid rent shall be promptly returned to Tenant.

7. **TENANT'S PARKING.** Parking of vehicles owned or operated by Tenant or Tenant's employees is hereby limited, restricted or prohibited, as follows: Front and side parking lots.

8. **LIABILITY INSURANCE.** Tenant shall not carry any stock of goods or do anything in or about the Premises which will in any way restrict or invalidate any insurance coverage of the Premises. Tenant agrees to pay upon demand as

additional rent any increase in premiums of insurance carried by the Landlord on the Premises resulting from the Tenant's occupancy or improvements. Tenant shall keep in full force and effect, at Tenant's expense, insurance for plate glass, personal property, trade fixtures, and property damages, as well as a public liability policy in which both Tenant and Landlord shall be named as the insured with the following minimum coverage:
Single Limit $ 1,000,000.00 Aggregate $ 2,000,000.00 .
A certificate of insurance showing the Landlord and Landlord's Agent as an additional insured shall be provided to the landlord not later than the commencement date of this lease and prior to the expiration of such insurance policy during the term of this lease.

9. **MAINTENANCE AND REPAIRS.** Landlord shall repair and maintain the foundation, roof, outer walls and structural members of the Premises. Tenant shall, at Tenant's sole expense make all other repairs necessary to maintain the Premises, both interior and exterior, ordinary and extraordinary including window glass, plate glass, storefronts, doors, windows, screens, awnings, locks, keys, weather stripping and thresholds, as well as all interior walls, floors, ceilings, and floor coverings. Tenant's responsibility to maintain the Premises shall also include the servicing, repair and maintenance of plumbing, electrical, heating, ventilating and air conditioning systems, including all pipes, wiring, fixtures, filters, equipment, machinery, boilers, furnaces, compressors and appliances, and for the replacement of any of the aforementioned systems if their failure is due to Tenant's neglect. Notwithstanding anything contained in this Lease to the contrary, during the term of this Lease, Landlord shall warrant the major components of the heating, ventilating, and air conditioning (HVAC) equipment servicing the Premises, to include the compressors, condensing units, and air handlers, which warranty shall be contingent upon Tenant maintaining the HVAC equipment and ductwork by entering into a contract with a reputable HVAC services company approved in writing by Landlord. Said contract shall include a minimum of monthly filter changes, routine testing for Freon leakage, cleaning, and other customary periodic maintenance. In the event a major component shall need replacement and Tenant is unable to provide written documentation to the Landlord of the required maintenance as set for in this paragraph, Tenant shall be responsible for the replacement of said component at Tenant's sole cost and expense. Tenant shall also repair and be responsible for any caused by stoppage, breakage, leakage, overflow, discharge or freezing of plumbing pipes, soil lines, or fixtures. If any part of the Premises is damaged by the Tenant, or Tenant's employees, agents or invitees, Tenant shall provide Landlord with immediate written notification of all damages to the property. After notification and approval of the Landlord, repairs shall be made promptly at Tenant's expense so as to restore said Premises to its previous condition. If Tenant refuses or neglects to commence necessary repairs within ten (10) days after written demand, or does not complete such repairs within a reasonable time thereafter, Landlord may make said repairs without liability to Tenant for any loss or damage that may accrue to Tenant's stock, business or fixtures by reason thereof and if Landlord makes such repairs, Tenant shall pay to Landlord, on demand, as Additional Rent, the cost thereof. Tenant's failure to pay shall constitute a default of this lease. Repairs that are the Landlord's responsibility shall be made within a reasonable time after written notice from the Tenant. Tenant's failure to give or unreasonable delay in giving notice of needed repairs or defects shall make Tenant liable for any loss or damage resulting from delay of needed repairs.

10. **REGULATIONS AND SANITATION.** Tenant shall keep the Premises clean, safe, sanitary, and in compliance with laws, ordinances and requirements of any legally constituted public authority. Tenant shall keep broom clean all areas in and around Premises that are not included in Common Area Maintenance, such as front sidewalks and area behind building. Cleaning includes removing of any trash or refuse deposited on the lease Premises or adjacent public area by Tenant, Tenant's customers', invitees, or agents. In the event of non-compliance by Tenant, Landlord shall have the right to have said areas cleaned, trash and refuse removed and charge the expense to Tenant as Additional Rent which shall be due and payable upon demand. Nonpayment of which shall constitute default of this Agreement. Tenant shall not allow loitering on Premises. Tenant shall employ if Landlord determines it is necessary, a reputable pest extermination company at regular intervals.

11. **ALTERATIONS.** Tenant shall make no alterations, additions, improvements, or rewiring in or to the Premises without the written consent of Landlord. All additions, or improvements to the Premises including carpeting, tile, other floor covering, wall covering, ceiling tile, etc., made with or without Landlord's written consent shall become part of the Premises, and the property of Landlord upon installation. Trade fixtures and office furniture shall be installed so as to be readily removable without injury to the Premises and any injury caused by said removal shall be repaired forthwith at Tenant's expense. Said trade fixtures shall be removed from the Premises before the end of this lease or shall become part of the Premises and the property of Landlord. Tenant shall not install or maintain any equipment, partitions, furniture, etc. which the weight or operation thereof would tend to injure, or be detrimental to the Premises or would unreasonably annoy or disturb other Tenants.

[___] TENANT, [___] TENANT, AND [___] LANDLORD HAVE READ THIS PAGE.

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12. **ASSIGNMENT OR SUBLEASE.** Tenant shall not, without written consent of Landlord, in each case, assign, transfer, mortgage, pledge or otherwise encumber or dispose of this lease, or sublet the Premises or any part thereof or permit the Premises to be occupied by other persons. Such consent shall not be unreasonably withheld, conditioned, or delayed. If this lease be assigned, or if the Premises or any part thereof be sublet or occupied by any other person, firm, office or corporation with or without written permission of Landlord, it will not relieve Tenant of any obligations under the terms of this lease, and if sublet, assigned or occupied without the Landlord's permission, this lease may, at the option of the Landlord, be terminated by a seven day written notice. In the event Tenant shall sublease the Premises in accordance herewith for rentals in excess of those rentals payable hereunder, Tenant shall pay to Landlord monthly in advance as Additional Rent hereunder, one-half of all such excess rent. Any proposed assignee or sublessee that proposes to assume Tenant's obligations hereunder shall execute a satisfactory assumption or sublease agreement before consent shall be given. Other provisions of this Paragraph to the contrary notwithstanding, Landlord shall have the right in its absolute and sole discretion to withhold consent to any sublease or assignment if Tenant shall be in default or breach of this Agreement or if the proposed assignee or sublessee or its business will cause Landlord to incur any costs of whatever kind or nature.

13. **SIGNS OR AWNINGS.** Tenant shall place no signs, notices, pictures, or advertising matter upon the exterior of the lease Premises except with the written consent of the Landlord. Any and all signs placed on the Premises by Tenant shall be maintained in compliance with rules and regulations governing such signs. The Tenant shall be responsible to Landlord for any damages by installation, use, maintenance or removal of said signs. Any electrical service needed for signs shall be installed at the Tenant's expense. Tenant shall, at Tenant's expense, remove signs at the expiration of the Agreement.

14. **WAIVER OF RIGHTS.** No failure of Landlord to exercise any power given Landlord hereunder, or to insist upon Tenant's strict compliance with Tenant's obligation hereunder and no custom or practice of the parties at variance with the terms hereof shall constitute a waiver of Landlord's right to demand exact compliance with the terms of this Agreement at a future time. The rights and remedies created by this Agreement are cumulative and the use of one remedy shall not be taken to exclude the right to the use of another.

15. **RULES AND REGULATIONS.** Landlord reserves the right at any time to make further rules and regulations as in Landlord's judgment that may be necessary for the safety, care, appearance, and cleanliness of the Premises and the entire property, and the preservation of good order herein, and such other rules and regulations shall be binding upon the parties hereto with the same force and effect as if they had been contained herein at the time of execution hereof.

16. **RIGHT OF ENTRY.** Landlord, without being liable for trespass or damages, shall have the right to enter Premises during reasonable hours, with reasonable prior notice, to examine same or to make repairs, additions, or alterations as Landlord may deem necessary for the safety, comfort, appearance, or preservation thereof or to exhibit said Premises. Entry shall also be allowed to post "FOR RENT" notice, during the 90 days before the expiration of this lease. Said right of entry shall likewise exist for the purpose of removing placards, signs, fixtures, alterations or additions which do not conform to this Agreement. In accordance with this right, Tenant shall give Landlord a key to any and all locks, security systems and burglar alarms. Tenant shall not change or install new locks or security systems without the written consent of Landlord.

17. **LIENS.** Tenant shall not create or allow to be created any liens for labor or materials against Landlord's interest in the Premises. All persons contracting with the Tenant for the erection, installation, alteration, repair or demolition of any building or other improvements on the Premises, and all material suppliers, contractors, mechanics, and laborers are hereby charged with notice that they must look to the Tenant and to the Tenant's interests only in the Premises to secure the payment of any bill for work done or material furnished during the rental period created by this Agreement. In the event that liens are placed on record against the Premises by contractors, mechanics, laborers, material suppliers, etc., of Tenant it will constitute a default of this Agreement. The Tenant shall indemnify, hold harmless, and defend the Landlord from any liens and encumbrances arising out of any work performed or materials furnished by or at the direction of the Tenant. Such indemnity shall include, without limitation, all attorney's fees and costs incurred by the Landlord due to the filing of such mechanic's lien or notice thereof. In the event that the Tenant, within twenty (20) days following the imposition of any such lien, shall not cause such lien to be released of record by payment or posting of a proper bond, in addition to all other remedies provided herein and by law, the Landlord shall have the right (but not the obligation) to cause the same to be released by such means as it shall deem proper, including bonding or payment of the claim giving rise to such lien. All such sums paid by the Landlord and all expenses incurred by it in connection therewith, including attorney's fees and costs shall be payable to the Landlord by the Tenant on demand with interest at the rate of eighteen (18%) percent per annum.

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18. **DAMAGE OR DESTRUCTION OF PREMISES.** If Premises are totally destroyed by fire or other casualty, this lease shall terminate as of the date of such destruction and rental shall be accounted for as between Landlord and Tenant as of that date. If Premises are damaged but not wholly destroyed by fire or other casualty, rental shall abate in such proportion as use of Premises has been lost to the Tenant. Landlord shall restore Premises to substantially the same condition as prior to damage as speedily as practicable, whereupon full rental shall commence. Insurance proceeds, if paid to Tenant, shall be assigned to Landlord to restore Premises and replace any covered contents owned by Landlord.

19. **DAMAGE TO PERSONAL PROPERTY.** All personal property, merchandise, fixtures and equipment placed or moved into the Premises shall be at the risk of Tenant or the owners thereof and Landlord shall not be liable for any damages, loss or theft of said personal property, merchandise, fixtures, or equipment, from any cause whatsoever.

20. **CONDEMNATION.** If the whole of the Premises, or such portion thereof as will make said Premises unusable for the purpose herein leased, be condemned by any legally constituted authority, this lease shall terminate on the date when possession thereof is taken by public authorities, and rental shall be accounted for as between Landlord and Tenant as of that date. Such termination, however, shall be without prejudice to the rights of either Landlord or Tenant to recover from the public authority compensation for damage caused by condemnation. Neither the Tenant nor Landlord shall have any rights in any award made to the other by any condemnation authority. In the event only such portion of the Premises is acquired by condemnation as will leave the remaining Premises, after alteration and repairs, in condition suitable for use by Tenant, the monthly rental payments from the day of such acquisition to the end of the original or any extended term of this lease shall be reduced in proportion to the resulting loss of use of Premises by Tenant. In the event of such partial acquisition and reduction in rent, Landlord shall make promptly at Landlord's expense, all necessary alterations and repairs that shall be required, to restore the Premises to a safe and usable condition.

21. **INDEMNITY AND LIABILITY.** Tenant shall indemnify and save Landlord harmless from any and all claims, damages, costs and expenses, including reasonable attorney's fees, arising from the management of the business conducted by Tenant on the Premises. Landlord shall not be liable, and Tenant waives all claims for damage to person or property sustained by Tenant, its employees or agents, resulting from the condition of the Premises, or any equipment, or, such as may result from any accident in or about the Premises or which may result directly or indirectly from any act of neglect of any other Tenant of the property of which the Premises is a part.

22. **HOLDOVER.** Tenant shall surrender to Landlord, at the end of the term of this lease or upon cancellation of this lease, said Premises broom clean and in as good condition as the Premises were at the beginning of the term of this lease, ordinary wear and tear and damage by fire and windstorm or other acts of God excepted, or Tenant will pay to Landlord all damages that Landlord may suffer because of Tenant's failure to do so. Tenant will indemnify and save Landlord harmless from and against all claims made by any succeeding Tenant of said Premises against Landlord because of delay in delivering possession of Premises, so far as such delay is occasioned by failure of Tenant to so surrender Premises. If Tenant remains in possession of the Premises or any part thereof after the expiration of the Agreement, such holdover places the Tenant in default and the Monthly Base Rental shall be increased to one hundred fifty percent (150%) of the last month's Monthly Base Rental unless given a month to month tenancy in writing from the Landlord.

23. **EFFECTIVE DATE OF LEASE.** This Agreement shall become effective as a binding agreement only upon the execution and delivery thereof by both Landlord and Tenant. If this Agreement is signed by one party and submitted to the other party, then it shall constitute an offer to lease which is subject to revocation at any time prior to execution by the other party and delivery of a fully executed copy of the submitting party.

24. **NOTICES.** Tenant hereby appoints as Tenant's agent to receive service of all notices required under this Agreement as well as all dispossessory distraint notices, the person in charge of Premises or occupying said Premises, at the time notice is delivered. A copy of all notices under this Agreement shall also be sent via certified mail, return receipt requested, or via recognized overnight delivery company, to Tenant's and Landlord's last known address as follows (or to such other address as either party may specify by written notice):

Tenant Address: Arelis Santos

Landlord Address: Harris Investment Holdings, LLC
2650 Halcomb Bridge, #630
Alpharetta, Ga 30022

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25. **BANKRUPTCY.** If Tenant shall be adjudicated bankrupt or as insolvent or take the benefit of any Federal reorganization or make a general assignment or take the benefit of any insolvent law, or if a Trustee in bankruptcy or a receiver be appointed or elected for Tenant, under Federal or State law, this Agreement at the option of the Landlord shall expire and end seven (7) days after Landlord gives Tenant written notice, UNLESS, the Tenant's Trustee immediately cures any default of Tenant hereunder and provides (in compliance with Federal and State laws) adequate assurance of future performance of Tenant's obligations hereunder.

26. **BEYOND LANDLORD'S CONTROL.** None of the acts, promises, covenants, or obligations on the part of the Tenant to be kept, performed or not performed as the case may be, nor the obligation of the Tenant to pay Monthly Base Rental. Additional Rent or other charges or payments shall be in anywise waived, excused or affected by reason of the Landlord being unable at any time during the term of this Agreement, to supply, or to delay in supplying heat, light, elevator service or any other service expressed or implied on the part of the Landlord to be supplied; or by reason of the Landlord being unable to make any alteration, repairs, or decorations, or to supply any equipment or fixtures, or any other promise, covenant, or obligations on the part of the Landlord to be performed, if the Landlord's inability or delay is caused by circumstances or events beyond the Landlord's control.

27. **KEYS.** Landlord shall provide Tenant with one key per lock, and the Tenant is responsible for accounting for all keys provided or duplicated and shall return all keys of Premises to the Landlord upon termination or cancellation of this Agreement and/or Tenant vacating said Premises. Landlord shall have the right, if in the Landlord's sole judgment it is necessary, to require the Tenant at Tenant's expense to replace locks, and to supply Landlord with one key to the new locks. The Landlord shall retain a master key or pass key to the Premises, including all security locks and systems. Tenant shall not change or install new locks or security systems without written approval from Landlord.

28. **ESTOPPEL.** Tenant shall from time to time, within ten days following written notice from Landlord, execute, acknowledge and deliver to the Landlord a written statement certifying that this Agreement is in full force and effect. This statement should also state whether or not the Landlord is in default in performance of any covenant or condition of this Agreement or other such reasonable terms required by the Landlord, purchaser, or lender for either. The failure of the Tenant to execute, acknowledge and deliver to the Landlord a statement in accordance with this covenant shall constitute an acknowledgment by the Tenant that this lease is unmodified and in full force and effect, and shall constitute a waiver of any defaults by the Landlord which may have existed prior to the date of such notice.

29. **PEACEFUL POSSESSION.** Subject to the terms, covenants and conditions of this lease, the Tenant shall have, hold and enjoy possession of the Premises, subject to the rights of the holders of any mortgage which now covers said Premises or which may hereafter be placed on Premises by Landlord. Tenant's rights are also subject to any underlying lease now or later covering the entire property of which the leased property is a part. Tenant shall execute any necessary lease subordination agreement at the Landlord's request.

30. **DEFAULT.** If Tenant fails to pay Monthly Base Rental including Additional Rent on or before the due dates as herein stated (TIME IS OF THE ESSENCE) this Agreement shall be in default. If Tenant fails to cure such default within five (5) days after written notice from Landlord; or if Tenant shall be in default in performing any of the terms, covenants and conditions of this Agreement, other than the provision requiring the payment of Monthly Base Rental and Additional Rent, and fails to cure such default within thirty (30) days after the receipt of written notice of default from Landlord; or if Premises shall be abandoned or deserted for fifteen (15) days, or if this Agreement is assigned to any other person, firm, office or corporation, without the permission of Landlord as required in Paragraph 15 herein, this lease at the Landlord's option shall expire and terminate seven (7) days after Landlord delivers written notice to Tenant of such condition or default and Tenant shall immediately quit and surrender said Premises to Landlord. In the event of any such default or breach of performance, the Landlord without any further notice or demand of any kind to the Tenant, may terminate this lease and re-enter and forthwith repossess the entire Premises and without being liable for trespass or damage shall re-let, lease or demise the Premises to another Tenant without any hindrance or prejudice to Landlord's right to distrain for any past due rent, Additional Rent, and rent from the time of such default or termination until the Premises were leased or rented to another Tenant.

31. **ASSIGNMENT OF CHATTELS.** Tenant hereby pledges and assigns to Landlord all the furniture, fixtures, goods, equipment and chattels of Tenant which shall or may be brought or put on said Premises as security for the payment of said rent, and tenant agrees that said lien may be enforced by distraint or foreclosure, at the election of Landlord. It is understood and agreed that any merchandise, fixtures, furniture, or equipment left in the Premises when Tenant vacates

shall be deemed to have been abandoned by Tenant and by such abandonment, Tenant relinquishes any right or interest therein and Landlord is authorized to sell, dispose of or destroy same.

32. **ATTORNEY'S FEE.** In the event Landlord successfully defends any action by the Tenant, or if it is necessary for Landlord to employ an attorney for the collection of rent or any other sum due hereunder, or to enforce any covenant of this lease, or the termination of this lease, or for the possession of the Premises or any part thereof the Tenant shall pay all costs, including reasonable attorney's fees.

33. **AGENT.** Tenant acknowledges that _____ is the leasing/managing agent for the Landlord of the Premises. Tenant shall pay all rent payable under this lease to said agent. The right to collect said rentals shall be governed by the written agreement between Landlord and agent for the management of the Premises and shall terminate with the expiration of said management agreement or any renewal thereof.

34. ***BROKER LIABILITY LIMITATION.*** *Parties agree Brokers provided Parties with benefits, services, assistance, and value in bringing about this Contract. In consideration and recognition of the risks, rewards, compensation and benefits arising from this transaction to Brokers, Parties each agree that they shall pay Brokers' attorneys fees and that Brokers, shall not be liable to either Party or both, either jointly, severally or individually, in an amount exceeding that Broker's Compensation by reason of any act or omission, including negligence, misrepresentation, errors and omissions, or breach of undertaking, except for intentional or willful acts. This limitation shall apply regardless of the cause of action or legal theory asserted against either Broker, unless the claim is for an intentional or willful act. This limitation of liability shall apply to all claims, losses, costs, damages or claimed expenses of any nature from any cause(s), except intentional or willful acts, so that the total liability of either Broker shall not exceed the amount set forth herein. Parties will indemnify and hold harmless and pay attorneys fees for Brokers from beach of contract, any negligent or intentional acts or omissions by any Parties, Inspectors, Professionals, Service Providers, Contractors, etc. including any introduced or recommended by Brokers. Parties each agree that there is valid and sufficient consideration for this limitation of liability and that Brokers are the intended third-party beneficiaries of this provision.*

35. **SUBORDINATION, ATTORNMENT, AND NON-DISTURBANCE.** Tenant agrees that this Agreement shall be subject and subordinate to any mortgages, deeds of trust or any ground lease now or hereafter placed upon the Premises and to all modifications thereto, and to all present and future advances made with respect to any such mortgage or deed of trust; provided however, that such mortgagee or ground lessor agrees not to disturb Tenant in its possession of the Premises so long as Tenant shall not be in breach or default under any of the terms and conditions of this Agreement. Tenant agrees to attorn to the mortgagee, trustee, or beneficiary under any such mortgage or deed of trust, and to the purchaser at a sale pursuant to the foreclosing thereof, and to the lessor in the event of a termination of any such ground lease.

36. **DEFINITIONS.** "Landlord" as used in this Agreement shall include the owner or owners of the property and/or the aforementioned managing agent as well as the Landlord's heirs, representatives, assigns and successors in title to Premises. "Tenant" shall include Tenant, Tenant's heirs and representatives, and if this lease shall be assigned or sublet, shall include also Tenant assignees or subleases, as to Premises covered by such assignment or sublease. "Agent" shall include agent, agent's successors, assigns, heirs and representatives. "Landlord," "Tenant," and "Agent," including male and female, singular and plural, corporation, partnership or individual, as may fit the particular parties. "Property" is defined as the land, lots, building improvements, and common areas as may be further defined herein, in which the Premises is included.

37. **ENVIRONMENTAL MATTERS.** Tenant represents, warrants and covenants to Landlord throughout the Term of this Agreement as follows that Tenant is and agrees to remain in compliance with all applicable federal, state and local laws relating to protection of the public health, welfare, and the environment ("Environmental Law") with respect to Tenant's use and occupancy of the Premises. Tenant agrees to cause all of its employees, agents, contractors, sublessees, assignees, and any other persons occupying or present on the Premises ("Occupants") to comply with all Environmental Laws applicable to their activities in and around the Premises.

38. **AMERICANS WITH DISABILITIES ACT.** Any other provision of this Agreement notwithstanding, the parties hereby agree that the Premises may be subject to the terms and conditions of the Americans with Disabilities Act of 1990 (hereinafter the "ADA"). The parties further agree and acknowledge that it shall be the sole responsibility of Tenant to comply with any and all provisions of the ADA, as such compliance may be required to operate the Premises. Tenant further agrees to indemnify, depend and hold Landlord harmless against any claims, which may arise out of Tenant's

failure to comply with the ADA. Such indemnification shall include, but not necessarily be limited to reasonable attorney's fees, court costs and judgments as a result of said claims. Within ten (10) days after receipt, Tenant shall advise the Landlord in writing and provide with copies of (as applicable), any notices alleging violation of the Americans with Disabilities Act of 1990 ("ADA") relating to any portion of the Property of the Premises, any claims made or threatened in writing regarding noncompliance with the ADA and relating to any portion of the Property or of the Premises, or any governmental or regulatory actions or investigations instituted or threatened regarding noncompliance with the ADA and relating to any portion of the Property or of the Premises.

39. **SPECIAL STIPULATIONS.** Insofar as the following stipulations conflict with any of the provisions herein, the following stipulations shall control (use addendum if necessary): Tenant will have one option to renew lease.

40. **SOUTH CAROLINA LAW TO GOVERN.** Tenant and Landlord agree that South Carolina law will govern the interpretation and enforcement of this Agreement.

41. **ENTIRE AGREEMENT.** This lease contains the entire agreement between the parties hereto and all previous negotiations leading thereto, and it may be modified only by a dated written agreement signed by both Landlord and Tenant. No surrender of the Premises or of the remainder of the term of this lease shall be valid unless accepted by Landlord in writing. TIME IS OF THE ESSENCE WITH REGARD TO ALL TERMS AND CONDITIONS IN THIS AGREEMENT.

42. **FACSIMILE.** The parties agree that the offer, any counteroffer and/or acceptance of any offer or counteroffer may be communicated by use of a fax and the signatures, initials, and handwritten or typewritten modifications to any of the foregoing shall be deemed to be valid and binding upon the parties as if the original signatures, initials and handwritten or typewritten modifications were present on the documents in the handwriting of each party.

43. **SEX OFFENDER/CRIMINAL INFORMATION.** Parties agree that Brokers/Property Managers are not responsible for obtaining or disclosing information in the SC Sex Offender Registry and no course of action may be brought against any Brokers/Property Managers for failure to obtain or disclose sex offender or criminal information. Tenant and Landlord agree that they have sole responsibility to obtain their own sex offender, death, psychological stigma, clandestine laboratory, and crime information from sources (e.g. law enforcement, P.I., web). The Tenant may obtain information about the Sex Offender Registry and persons registered with the Registry by contacting the local county Sheriff or other appropriate law enforcement officials.

44. **NON-RELIANCE CLAUSE.** Both Tenant and Landlord hereby acknowledge that they have not received or relied nor could have relied upon any statements or representations or promises or agreements or inducements by either Broker or their agents which are not expressly stipulated herein. If not contained herein, such statements, representations, promises, or agreements shall be of no force or effect. This general non-reliance clause shall not prevent recovery in tort for fraud or negligent misrepresentation or intentional misrepresentation unless specific non-reliance language is included in this agreement. This is a non-reliance clause and is neither a merger clause nor an extension of a merger clause. The parties execute this agreement freely and voluntarily without reliance upon any statements or representations by parties or agents except as set forth herein. Parties have fully read and understand this Agreement and the meaning of its provisions. Parties are legally competent to enter into this agreement and to fully accept responsibility. Parties have been advised to consult with counsel before entering into this agreement and have had the opportunity to do so.

THE UNDERSIGNED HEREBY WARRANT THAT THEY OWN THE PROPERTY AND/OR HAVE THE AUTHORITY TO EXECUTE THIS AGREEMENT. THIS IS A LEGALLY BINDING AGREEMENT. OWNER SHALL SEEK FURTHER ASSISTANCE IF THE CONTENTS ARE NOT UNDERSTOOD. OWNER ACKNOWLEDGES RECEIPT OF A COPY OF THIS AGREEMENT. OWNER AGREES TO RECEIVE COMMUNICATIONS FROM BROKER AT THE EMAIL ADDRESS, PHONE AND FAX NUMBER LISTED BELOW.

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IN WITNESS WHEREOF, this agreement has been duly executed by the parties.

Tenant Aracelis Santos Date Witness to Tenant
Tenant's Email Address: _____
Phone: _____ Fax: _____

Tenant Date Witness to Tenant
Tenant's Email Address: _____
Phone: _____ Fax: _____

Landlord Date Witness to Landlord
Landlord's Email Address: _____
Phone: _____ Fax: _____
LANDLORD'S AGENT AND COMPANY _____
TENANT'S AGENT AND COMPANY _____

GUARANTEE

As an inducement and, thus, a further consideration for the Landlord entering into this Agreement with the Tenant, the undersigned (jointly and severally, if more than one) hereby guarantees full performance by the Tenant and its heirs, successors, or assigns of all of the terms and conditions of the Agreement. The Landlord is not required to provide the Guarantor(s) with any notice provided for in the Agreement. In addition, this Guarantee is not waived by any delay that the Landlord has permitted the Tenant in satisfying its obligations under the Agreement. This Guarantee runs to the Guarantor's heirs, successors, and assigns and ensures to the benefit of the Landlord and its successors, and assigns. The Landlord and Tenant may agree to a modification of the Agreement without the approval of the Guarantor(s), provided that the obligation of the Guarantor(s) is not increased beyond the financial conditions contained in the Lease. This is a guarantee of payment and performance and not merely of collection of any term or condition of the Agreement that requires the Tenant to pay the Landlord any sum of money.

X _____
GUARANTOR Date X _____ Witness to GUARANTOR

GUARANTOR Date Witness to GUARANTOR

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August 6, 2016

Aqui esta el contrato nuevo de Latino Mix. Nesecitio la direction de Arecelis en su casa. Gracias

/s/ Isabelle Martinez

August 6, 2016

Here is the new contract for Latino Mix. I need Arecelis address to her house. Thank you.

Jue, Sep. 22 9:15 a.m.

I: Aracelis, cyan [quando] yo firmarsre [firmastes] el ease, se the [te] olvido, firmar abajo. Puedes firmar lo [firmarlo] hoy?

A: Si lo puede dejar en el Alamo. Con la Cenora Alicia esta ahi

I: so yo lo demo ahu luego

A: OK. Gracias

I: El dueno no vas firmar otro contrato para Latino mix. El ultimate dia Es noviembre 30. Esto es notices solanente, voy a arquilar ese espacio. Si quere hablar me llamas.

A: Puedo saver porque? No entiendo Isabel firme el contrato del Alamo. Recuerda que me dijo que faltaba una hoja por firmar. Ok, pero yo firme el contrato de la tienda. Llamame el lunes para hablar.

Sabado Octubre, 29, 2017

I: Aracelis, eso ese lo que yo le dije, pero la ver dad es que in contrato firms do por una persona es una offerta, via do firmado y acceptado es uncontrato. Teaquerda que una parte no estaba firmado? Pore so no lo mande, y ace poco que tu lo firmaste, de lo Mande y el no lo firmo, parese qu el Davis de todoas los problem as que ustedes tuvieron. 191 personas en un lugar que legalmente solo ocupe 99 personas. La policia le metio un su de $200,000. Si no quita el Alamo Café, rasones, pies ay varios. Le dije a Benjamin pero el de puso bravo con mi. Tengo que arquilar los dos espacios. Es mi trabajo. No los puedo ayduar.

Jun, Octubre 31, 12:25pm

A: Buenas tarde Isabel. Si tienes tiempo para hablar hoy no importa qu sea noch.

Mar, Nov. 1, 11am

A: Buenos dias ISable. Porfabor cuando tenga teimpo call me please.

Miercoles, Noviembre 30, 10:53 am

I: Aracelis, Hoy es el ultimate dia que la Latino Mix puede estar abierto. Manana Por la Manana nesecite las llaves y yo voy a poner letter en la ventana. Me puedes encontrar ago manana a las 10? Deja me saber por favor. Gracias.

A: Buenos dias Isa bel. La verdad es que no me a llegado ninguna noticia official mene de la compania explicando porque quiere el edificio ni tampoco una orden de desalojo. Osea no e recibido namas lo que usted me dijo.

I: Yo te dije que el dueno no va firmar el contrato. Yo soy el agente. Yo voy a alquilar el espacio. Si tengo quel lamar la policia lo ago. Y si no de van, applicamospara una evection. No Es culpa mia. Yo no soy el dueno. Yo te dl 32 dias de noticia. Por texto y por telephono. Now vemos manana o applicamos para sacar los? Dejame saber.

A: Mandame la evection. Esto es illegal, yo tengo pruebas de que firme un contrato, necesito que todo transcurra de la manera correcta....y lo correcto es una notificacion por escrito de la compania.

I: Senora, sonde esta el co trait firmado por el dueno? El no quere que ustedes esten ahi para vender alchol para el Alamo. Ya esta. A quehora manana yo nesecite las llaves?

Jue, dic 1 4:44 pm

I: El dueno no quere firmar el contrato Nuervo. Pro eso no lo tienes.

Thursday, September 22, 2016 9:15 am

Isabella: Aracelis, when you signed the lease, you forgot to sign below. Can you sign it today?

Arecellis: If you can leave it at the Alamo with Mrs. Alicia, [she] is there.

Isabella: Yes, I will leave it there later.

Arecellis: O.K. Thank you

Saturday, October 29, 2016 4:01 p.m.

Isabella: The owner is not going to sign another contract for Latino Mix. The last day is November 30. This a notice only. I will lease that space. If you want to talk, call me.

Arecellis: Can I know why? I do not understand. Isabel, I signed the Alamo contract! Remember when you told me I was missing a sheet to sign, that he told me that he had a sheet to sign. Okay, but I signed the store contract. Call me on Monday to talk.

Saturday, October 29, 2016 7:46

Isabella: Aracelis, that's what I told you, but the truth is that in contract firms do by a person is an offer, via signed and accepted is a contract. Remember that a space was not signed? That is why I just do not send it, and you just sign it. I send it, and he does not sign it. It seems that the beginning of all the problems that you had. 191 people in a place that legally only occupies 99 people. The police threatened to sue him for $200,000 if he does not remove the Alamo Café. We

have various reasons. I told Benjamin, but he got mad at me. I have to lease the two spaces. It's my job. I can not help you.

Monday October 31, 12:25 pm

Arecellis: Good afternoon Isabel. If you have time to talk to me today. I do not care if it is late.

Tuesday, November 1, 11:00 am

Arecellis: Good morning, Isabel. Please when you have time call me please.

Wednesday, November 30, 10:53 am

Isabella: Aracelis, Today is the last day that Latino Mix can be open. Tomorrow morning, n the morning, I need the keys and I'll put a sign in the window. Can you meet me tomorrow at 10? Let me know, please. Thank you.

Arelilis: Good morning Isabel. The truth is that I have not received any official notice from the company explaining why they want the building or an eviction order. I have receive nothing—just what you tell me.

Isabella: I told you that the owner is not going to sign the contract. I am the agent. I am going to rent the space. If I have to call the police, I will. If you do not leave, I will apply for an eviction. It's not my fault. I am not the owner. I gave you 32 days notice by text and by telephone. We see you tomorrow or we apply to take you out? Let me know.

Arecellis: Send me the eviction. This is illegal, I have proof that I signd a contract, I need everything to happen in the right way ... and the correct thing is a written notification from the company.

Isabella: Senora, where is this the contract signed by the owner? He does not want you to be there to sell alcohol to the Alamo. It is done. At what time tomorrow I need the keys?

December 1, 2016, 4:44 p.m.

Isabella: The owner does not want to sign the new contract. That is why you do not have it.

Mándame la evection
Esto es ilegal, yo tengo pruebas de que firmé un contrato, necesito que todo transcurra de la manera correcta, y lo correcto es una notificación por escrito de la compañía

miercoles noviembre 30-16
ISABEL MARTINEZ

who is the actual
sight by the own
he does want you to
be there

Senora, sonde esta el co trait firmado Por el dueno?

El no quere que ustedes esten ahi para vender alchol para el Alamo .

Ya esta. A quehora Manana yo nesecite las llaves ?

11/30

jue, dic. 1 4:44 PM

El dueno no quere firmar el contrato Nuevo.

ISABEL MARTINEZ
Owner doesn't want to
sign the new contract.

Por eso no lo tienes.

hoy, 7:47 PM

●●○○○ T-Mobile 7:52 PM 43 %

50

Isabel Realestel

lo que usted me dijo

Yo te dije que el dueno no va firmar el contrato. Yo soy el agente. Yo voy a arquilar el espacio. Si tengo quel lamar la policia lo ago. Y si no de van, applicamospara una evection.

No Es culpa mia. Yo no soy el dueno .

Yo te DI 32 Dias de noticia. Por texto y Por telephono.

Now vemos manana o applicamos para sacar los?

Dejame saber

Mándame la evection
Esto es ilegal,yo tengo pruebas de que firme un contrato,necesito que todo transcurra de la manera correcta...y lo correcto es una notificación por escrito de la compañía

miercoles noviembre 30-16

[redacted]

ISABEL MARTINEZ

ARACELIS
Send me the evicty. This is illegal.

●●●●○ T-Mobile LTE 1:40 PM 76 %



Aracelis

lun, oct. 31 12:25 PM

Buenas tarde Isabel
Si tienes tiempo para hablar hoy no importa que sea noche

ARACELIS

mar, nov. 1 11:00 AM

Buenos días Isabel
Porfabor cuando tenga tiempo call me please

ARACELIS

mié, nov. 30 10:53 AM

Aracelis, Hoy Es el ultimate dia que la Latino mix puede estar abierto.

Manana Por la Manana nesecite las llaves y yo voy a poner lettrero en la ventana.

Aracelis, Hoy Es el ultimate dia que la Latino mix puede estar abierto.

Manana Por la Manana nesecite las llaves y yo voy a poner lettrero en la ventana.

ISABEL MARTINEZ
Today is the last day Latino mix can be open

Me prudes encontrar ago Manana a las 10?

Deja me saber Por favor.
Gracias

Buenos días Isabel .la verdad es que no me a llegado ninguna noticia oficial mente de la compañía explicando porque quiere el edificio ni tampoco una orden de desalojo .osea no e recibido namas lo que usted me dijo

The truth is I don't have an order Eviction.

Aracelis , eso es lo que yo le dije, pero la ver dad es que in contrato firms do Por una persona Es una offerta, via do firmado y acceptado Es Un contrato .

Te aquerda que una parte no estaba firmado?

Por eso no lo mande, y ace poco que tu lo firmaste, de lo Mande y el no lo firmo, parese que el Davis de todos los problem as que ustedes tuvieron. 191 personas en Un lugar que legalmente solo ocupe 99 personas.

La policia le metio Un su de $200,000. Si no quita El Alamo Cafe, rasones, pies Ay varios.

Le dije a Benjamin pero el de puso bravo con mi.

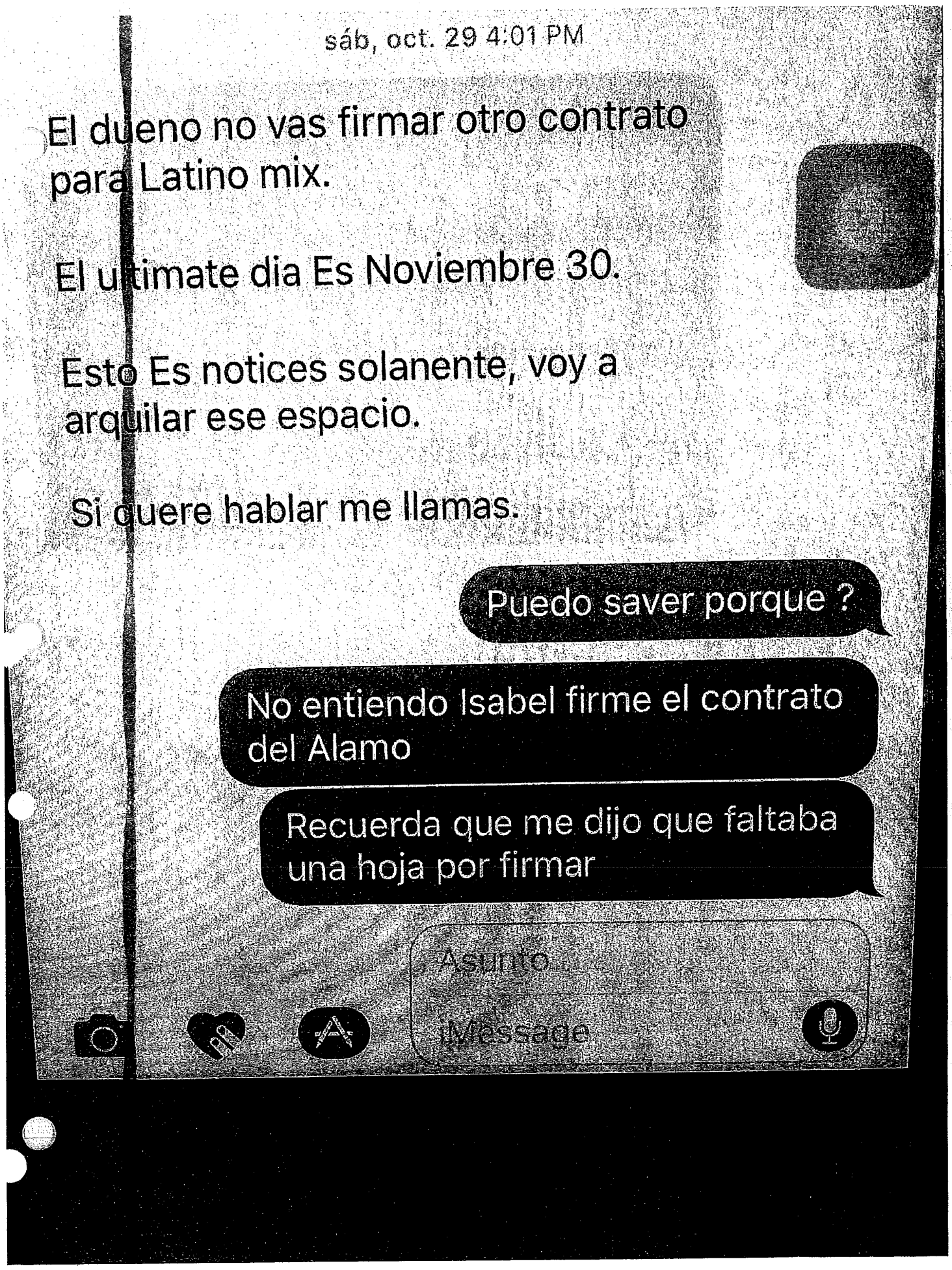
Tengo que arquilar los dos espacios. Es mi Trabajo . No los puedo ayudar.

Sabado octubre 29-18
Isabel MARTINEZ

This what I said.
Do yu mind that
are part was not
right.

RACELIS

Ok pero yo firmé el contrato de la tienda .llamame el lunes para hablar


sáb, oct. 29 4:01 PM
El dueno no vas firmar otro contrato para Latino mix.
El ultimate dia Es Noviembre 30.
Esto Es notices solanente, voy a arquilar ese espacio.
Si quere hablar me llamas.
Puedo saver porque ?
No entiendo Isabel firme el contrato del Alamo
Recuerda que me dijo que faltaba una hoja por firmar
Asunto
iMessage

jue, sep. 22 9:15 AM

ISABEL

Aracelis, cyan do firmasre el lease , se the olvido, firmar Abajo. Puedes firmar lo hoy?

ARACELIS Si lo puede dejar en el Alamo

ARACELIS Con la Ceñora Alicia está ahí

So yo lo demo ahi luego Isabel martinez

ARACELIS Ok

ARACELIS Gracias

Asunto

iMessage

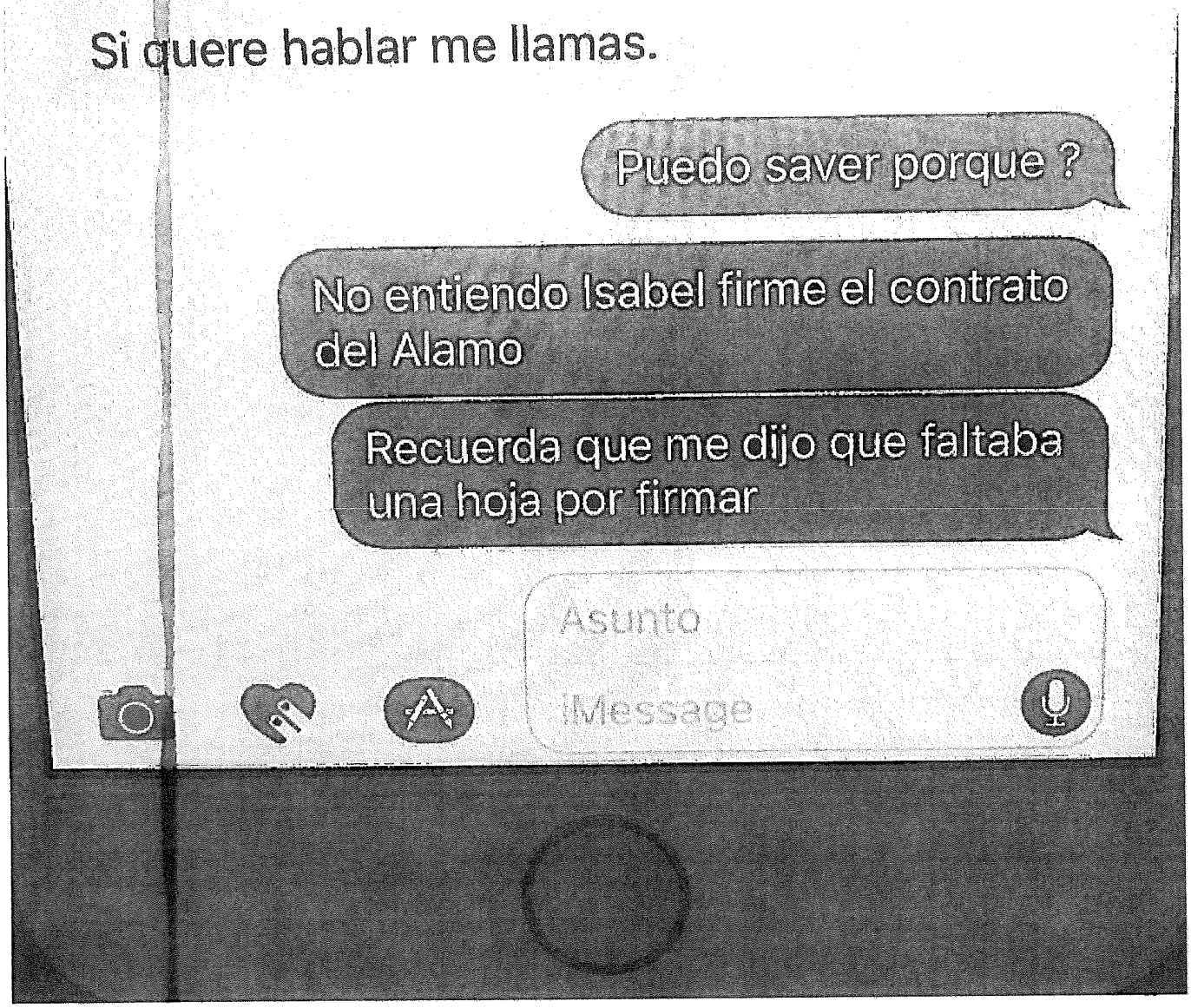
sáb, oct. 29 4:01 PM

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El ultimate dia Es Noviembre 30.

Esto Es notices solanente, voy a arquilar ese espacio.

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ARACELIS

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Le dije a Benjamin pero el de puso bravo con mi.

Tengo que arquilar los dos espacios. Es mi Trabajo . No los puedo ayudar.

Sabado Octubre 29-17
Isabel MARTINEZ

●●●●○ T-Mobile LTE 1:40 PM 76 %



Aracelis

tue, oct. 31 12:25 PM

Buenas tarde Isabel
Si tienes tiempo para hablar hoy no importa que sea noche

ARACELIS

mar, nov. 1 11:00 AM

Buenos días Isabel
Porfabor cuando tenga tiempo call me please

ARACELIS

sáb, nov. 30 10:52 AM

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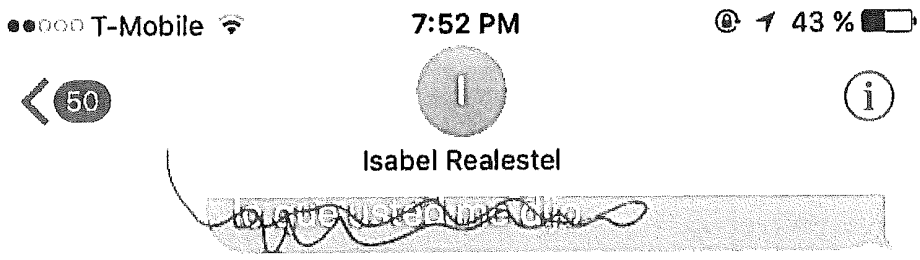
ISABEL MARTINEZ

Manana Por la Manana nesecite las llaves y yo voy a poner lettrero en la ventana.

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Gracias

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Yo te dije que el dueno no va firmar el contrato. Yo soy el agente. Yo voy a arquilar el espacio. Si tengo quel lamar la policia lo ago. Y si no de van, applicamospara una evection.

miercoles noviembre 30-1(

[redacted]

ISABEL MARTINEZ

No Es culpa mia. Yo no soy el dueno .

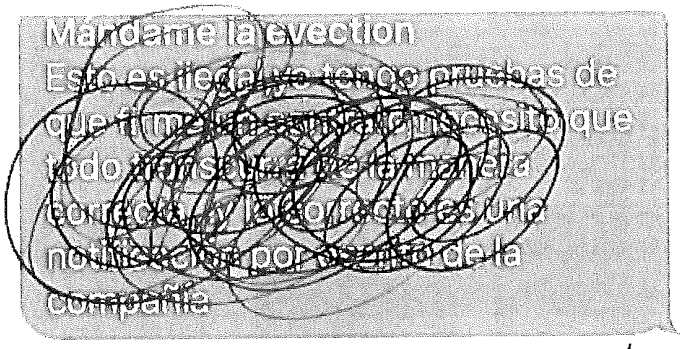
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Dejame saber

Mándame la evection
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ARACELIS



miercoles noviembre 30-16
ISABEL MARTINEZ

Senora, sonde esta el co trait
firmado Por el dueno?

El no quere que ustedes esten ahi
para vender alchol para el Alamo .

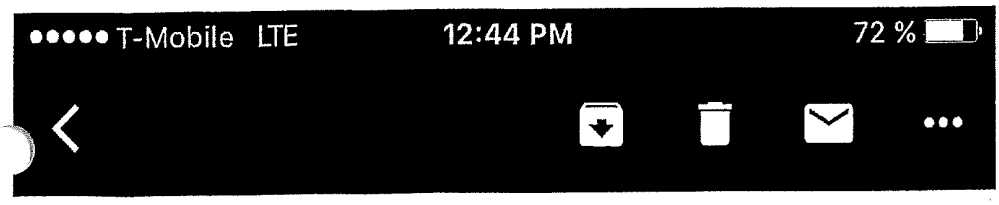
Ya esta. A quehora Manana yo
nesecite las llaves ?

jue, dic 1 4:44 PM

ISaBEL MARTiNEZ

El dueno no quere firmar el contrato
Nuevo.

Por eso no lo tienes.



Fwd: New lease renewal for Latino Mix Recibidos

mí
para mí

dic. 1, 2016
December 1, 2016

Enviado desde mi iPhone

Inicio del mensaje reenviado:

De: isabellemartinez1961@gmail.com
Fecha: 6 de agosto de 2016, 4:08:57 PM EDT
Para: arelis.santos2000@gmail.com
Cc: isabellemartinez1961@gmail.com
Asunto: New lease renewal for Latino Mix
Responder a: isabellemartinez1961@gmail.com

August 6, 2016

6, A

Sent From Isabelle Martinez
Latino Mix Lease renewal

Isabelle Martinez has sent you a document(s) from zipForm® Plus
Aracelis ,

Aqui esta el contrato nuevo de Latino Mix. Nesecito la direction de Aracelis en su casa. GrAcias,

Isabelle Martinez
The Boulevard Company
843-708-7169

18070 15 Mile Road, Fraser, MI 48026
Copyright 2015, zipLogix. All Rights Reserved

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DATE	DEFENDANT	CHARGE
	Hanahan Municipal Court	
(1) August 20, 2016 4102P0213362—Officer Dodd	Benjamin F. Reyna	After Hours Consumption
(2) October 1, 2016 2007—Officer Dodd	Benjamin F. Reyna	After Hours Consumption
(3) October 2, 2016 2008—Officer Dodd	Benjamin F. Reyna	After Hours Consumption
(4) October 2, 2016 2009	Benjamin F. Reyna	Public Nuisance
(5) October 2, 2016 2010	Benjamin F. Reyna	Disorderly House
(6) October 2, 2016 2011	Benjamin F. Reyna	Unsafe Building (Occupancy)
(7) October 23, 2016 52737GT	Aracelis Santos Gomez	Assault & Battery 3d degree
(8) October 29, 2016 2012	Benjamin F. Reyna	After Hours Consumption
(9) November 5, 2016 4102P0213823—Officer Dodd	Nicole Lynn Franz	After Hours Consumption
(10) November 5, 2016 4102P0213825—Officer Dodd	Agustin Torres-Sanchez	After Horus Consumption
(11) November 5, 2016 4102)0213828—Officer Dodd	Guillermina Anastacio-Eleuterio	After Hours Consumption
(12) November 5, 2016 4102P0213829—Officer Dodd	Angela Hernandez	After Hours Consumption
(13) November 5, 2016 4102P0213830—Officer Dodd	Arelia Santos Gomez	After Hours Consumption

6

(14) November 5, 2016 4102P0213824—Officer Dodd	Cruz Torres	After Hours Consumption
(15) November 5, 2016 (No ticket number)—Officer Dodd	Juan Balderas	After Hours Consumption
(16) November 5, 2016 4102P0213827—Officer Dodd	Gisel Gonzales Cruz	After Hours Consumption
(17) November 6, 2016 4102P0213834	Arelis Santos Gomez	Unlicensed Sales
(18) November 11, 2016 4102P0213835—Officer Dodd	Arelis Santos Gomez	After hours Consumption
(19) November 16, 2016 52738GT	Benjamin F. Reyna	Disorderly Conduct
(20) November 16, 2016 52739GT	Benjamin F. Reyna	After Hours Consumption
(21) November 26, 2016 4102P0214311—Officer Dodd	Brandon Leroy Washington-Brown	After Hours Consumption
(22) December 10, 2016 4102P0214334	Leroy Washington-Brown	Operating w/o license
(23) December 10, 2016 4102P0214335—Officer Dodd	Leroy Washington-Brown	After Hours Consumption
(24) December 10, 2016 4102P0214336	Leroy Washington-Brown	Noise Ordinance
(25) December 24, 2016 4102P0214347—Officer Dodd	Anthony Dale Foster	After Hours Consumption
(26) January 7, 2017 4102P0214411—Officer Dodd	Arelis D. Santos Gomez	After Hours Consumption
(27) January 7, 2017 4102P0214412—Officer Dodd	Arelis D. Santos Gomez	Operating w/o business license

(28) January 7, 2017 4102P0214413—Officer Dodd	Arelis D. Santos Gomez	Interfering with City employees
(29-42)		
January 7, 2017 3400	Arelis D. Santos Gomez	2015 IFC, 609.3.3.3.1
3401	Arelis D. Santos Gomez	2015 IFC, 609.3.3.3
3402	Arelis D. Santos Gomez	2015 IFC, 609.3.3.1
3403	Arelis D. Santos Gomez	2015 IFC, 509.1
3404	Arelis D. Santos Gomez	2015 IFC, 901.6
3405	Arelis D. Santos Gomez	2015 IFC, 315.3.3
3406	Arelis D. Santos Gomez	2015 IFC, 605.1
3407	Arelis D. Santos Gomez	2015 IFC, 605.3
3408	Arelis D. Santos Gomez	2015 IFC, 605.4
3409	Arelis D. Santos Gomez	2015 IFC, 605.5
3410	Arelis D. Santos Gomez	2015 IFC, 605.6
3411	Arelis D. Santos Gomez	2015 IFC, 1010.1.9.1
3412	Arelis D. Santos Gomez	2015 IFC, 1010.1.9.3.2.2
3413	Arelis D. Santos Gomez	2015 IFC, 110.1.1
3414	Arelis D. Santos Gomez	2015 IFC, 111.1
(43) November 6, 2016 4102P0210213836	Lance Grimes	Disorderly conduct
(44)	Evodio Hernandez Santos	Unlawful use of 911
(45) 52737 GT	Arelis Santos Gomez	Assault and Battery

(46) September 3, 2017 4102P0216292	Arelis Santos Gomez	Unlawful Consumption Ordinance 4-2

Moncks Corner-Traffic Tickets- SLED

(47) March 20, 2017 26437 DB	Anthony Dale Foster	Unlawful sale of beer/and Operating w/o a permit
(48) March 20, 2017 26438 DB	Arelis Santos Gomez	Unlawful sale of beer/and Operating w/o a permit

Translation of Voice Mail Message

To: Aracelis
From: Isabella Martinez
Boulevard Company
806 Jonnie Dodds Blvd.
Mt. Pleasant, S. C. 29464

"It's [Isabella]. I already talked with Benjamin. YOU knew, HE knew, EVERYONE knew and I NEVER told you that I was going to send a letter ("carta"). I sent text messages over a thousand times, and we talked on the telephone various times. This . . . this . . . enough . . . everything is not going to be nice. O.K. We're going to finish this as soon as possible. With court or whatever. You guys are horrible. Bye."

7

DOC: 2015040654
RB 2071: 749

CYNTHIA B FORTE
BERKELEY COUNTY
REGISTER OF DEEDS

Po Box 6122 ~ Moncks Corner, SC 29461 (843) 719-4084

***** THIS PAGE IS PART OF THE INSTRUMENT *****

Instrument #:	2015040654		
Receipt Number:	7593	**Return To:**	WEEKS AND IRVINE
Recorded As:	DEED		8086- RIVERS AVENUE
Recorded On:	December 09, 2015		NORTH CHARLESTON, SC, 29406
Recorded At:	10:00:33 AM	**Received From:**	WEEKS AND IRVINE
Recorded By:	BEVERLY BLAKE	**Parties:**	
Book/Page:	RB 2071: 749 - 753		Direct- FRANCON LLC
Total Pages:	5		Indirect- HARRIS INVESTMENT HOLDINGS LLC

***** EXAMINED AND CHARGED AS FOLLOWS *****

Recording Fee:	$10.00
Consideration:	$75,000.00
County Tax:	$82.50
State Tax:	$195.00
Tax Charge:	$277.50

RECEIVED

DEC 09, 2015

ASSESSOR
BERKELEY COUNTY SC
JANET B. JUROSKO
AUDITOR BERKELEY COUNTY SC

Cynthia B. Forte

Cynthia B Forte - Register of Deeds

8

DOC: 2015040657
RB 2071: 779

CYNTHIA B FORTE
BERKELEY COUNTY
REGISTER OF DEEDS

Po Box 6122 ~ Moncks Corner, SC 29461 (843) 719-4084

***** THIS PAGE IS PART OF THE INSTRUMENT *****

Instrument #:	2015040657		
Receipt Number:	7595	**Return To:**	WEEKS AND IRVINE
Recorded As:	DEED		8086- RIVERS AVENUE
Recorded On:	December 09, 2015		NORTH CHARLESTON, SC, 29406
Recorded At:	10:02:50 AM	**Received From:**	WEEKS AND IRVINE
Recorded By:	BEVERLY BLAKE	**Parties:**	
Book/Page:	RB 2071: 779 - 783		Direct- FRANCON LLC
Total Pages:	5		Indirect- HARRIS INVESTMENT HOLDINGS LLC

***** EXAMINED AND CHARGED AS FOLLOWS *****

Recording Fee:	$10.00
Consideration:	$357,500.00
County Tax:	$393.25
State Tax:	$929.50
Tax Charge:	$1,322.75

RECEIVED

DEC 09, 2015

ASSESSOR
BERKELEY COUNTY SC
JANET B. JUROSKO
AUDITOR BERKELEY COUNTY SC

Cynthia B. Forte

Cynthia B Forte - Register of Deeds

9

WHEREAS, at a meeting of the Members and/or Managers of Francon, LLC, duly called and held, it was unanimously resolved that the property hereinbelow described be conveyed to the Grantee(s) herein for the consideration hereinafter shown and that MICHAEL T. LEONARD, as the SOLE MEMBER of FRANCON, LLC, be and is authorized to execute this deed of conveyance on behalf of the said LLC as its act and deed.

STATE OF SOUTH CAROLINA)
)
COUNTY OF CHARLESTON)

TITLE TO REAL ESTATE

KNOW ALL MEN BY THESE PRESENTS, that, **FRANCON, LLC,** (hereinafter whether singular or plural the "Grantor") in the State aforesaid, for and in consideration of the sum of **THREE HUNDRED FIFTY-SEVEN THOUSAND FIVE HUNDRED AND NO/100 ($357,500.00) DOLLARS, and subject to the restrictions, exceptions and limitations, if any,** as hereinafter set forth, to the Grantor paid by **HARRIS INVESTMENT HOLDINGS, LLC,** (hereinafter whether singular or plural the "Grantee") have granted, bargained, sold and released, and, by these presents, do grant, bargain, sell and release unto the said **HARRIS INVESTMENT HOLDINGS, LLC,** its Successors and/or Assigns, forever, in fee simple, the following described real property, to-wit:

All that lot, tract, piece or parcel of land, consisting of approximately 0.40 acres, more or less, situate, lying and being in the City of Hanahan, County of Berkeley, State of South Carolina, shown and designated as Tract A on a plat entitled, "Boundary Line Adjustment Survey 5901 Loftis Road Berkeley County, South Carolina" made by Jack A. Mahony, R.L.S., S.C. Reg. 16816, dated June 24, 2005, and recorded in the Register of Deeds Office for Berkeley County, S.C. on October 18, 2005, in Plat Cabinet M, at Page 143-H. Said tract having such size, shape, location, dimensions, buttings and boundings, more or less, as will by reference to the aforementioned plat more fully appear.

BEING the same property (as to 0.31 ac +/-) conveyed to Francon, LLC, by Deed of Michael T. Leonard dated September 5, 2002, and recorded on October 7, 2002 in the RMC Office for Berkeley County, SC, in Book 2938, at Page 144; ALSO being a portion of the same property (as to 0.09 ac +/-) conveyed to Francon, LLC, by Deed of Paragon Resources, Inc. dated October 2, 2003, and recorded on October 8, 2003 in the RMC Office for Berkeley County, SC, in Book 3621, at Page 306.

Grantee's Address: **2650 Holcomb Bridge**
Suite 630
Alpharetta, GA 30022

TMS No.: **295-15-02-068**

Together with all and singular the rights, members, hereditaments and appurtenances to the said premises belonging or in anywise incident or appertaining.

TO HAVE AND TO HOLD all and singular the said premises before mentioned unto the said Grantee, **HARRIS INVESTMENT HOLDINGS, LLC,** and its Successors and/or Assigns forever.

And the Grantor do hereby bind the Grantor and the Grantor's Successors and Assigns, to warrant and forever defend all and singular the said premises unto the said Grantee hereinabove named and the Grantees' Heirs and Assigns against the Grantor and the Grantor's Successors and against every person whomsoever lawfully claiming, or to claim, the same or any part thereof.

Weeks & Irvine, LLC
8086 Rivers Ave. 2nd Floor
North Charleston, SC 29406

4

WITNESS my hand and seal this 1st day of December in the year of our Lord, Two Thousand and Fifteen (2015) and in the Two Hundred Fortieth (240th) year of the Sovereignty and Independence of the United States of America.

SIGNED, SEALED AND DELIVERED
IN THE PRESENCE OF:

Witness No. 1

Witness No. 2

Francon, LLC

BY: _____
Michael T. Leonard, Its Sole Member

NAMES MUST BE SIGNED EXACTLY AS THEY ARE TYPED

ACKNOWLEDGMENT

STATE OF SOUTH CAROLINA

COUNTY OF CHARLESTON

MARK W. WEEKS NOTARY PUBLIC SOUTH CAROLINA My Comm. Exp. 01-20-2[illegible]

I, _____, a Notary Public for the County of Charleston and State of South Carolina, do hereby certify that Michael T. Leonard, as Sole Member of Francon, LLC personally appeared before me this day and acknowledged the due execution of the foregoing instrument.

Witness my hand and official seal, this the 1st of December, 2015.

Notary Public
My Commission Expires: [illegible]
(SEAL)

DOC: 2015040657
RB 2071: 782

STATE OF SOUTH CAROLINA)
) **AFFIDAVIT**
COUNTY OF CHARLESTON)

Date of Transfer of Title
December 1, 2015

PERSONALLY appeared before me the undersigned, who being duly sworn, deposes and says:

1. I have read the information on this Affidavit and I understand such information.

2. The property is being transferred by Francon, LLC TO Harris Investment Holdings, LLC on December 1, 2015.

3. Check one of the following: The deed is:
   a. X subject to the deed recording fee as a transfer for consideration paid or to be paid in money or money's worth.
   b. ___ subject to the deed recording fee as a transfer between a corporation, a partnership or other entity and a stockholder, partner, or owner of the entity, or is a transfer to a trust or as a distribution to a trust beneficiary.
   c. ___ EXEMPT from the deed recording fee because _____. (Explanation, if required: n/a If exempt, please skip items 4-6 and go to Item No. 7 of this affidavit.

4. Check one of the following if either Item 3(a) or item 3(b) above has been checked.
   a. X The fee is computed on the consideration paid or to be paid in money or money's worth in the amount of $357,500.00.
   b. ___ The fee is computed on the fair market value of the realty, which is $_____.
   c. ___ The fee is computed on the fair market value of the realty as established for property tax purposes which is $_____.

5. Check YES ☐ or NO ☒ to the following: A lien or encumbrance existed on the land, tenement or realty before the transfer and remained on the land, tenement or realty after the transfer. If "YES", the amount of the outstanding balance of this lien or encumbrance is $_____.

6. The DEED Recording Fee is computed as follows:
   a. $357,500.00 _____ the amount listed in Item No. 4 above
   b. $0.00 _____ the amount listed on Item No. 5 above (no amount, please zero)
   c. $357,500.00 _____ subtract Line 6(b) from Line 6(a) and place the result here.

7. As required by Code Section 12-24-70, I state that I am a responsible person who was connected with the transaction as Grantor.

8. I understand that a person required to furnish this affidavit who willfully furnishes a false or fraudulent affidavit is guilty of a misdemeanor and, upon conviction, must be fined not more than one thousand dollars or imprisoned not more than one year or both.

STATE OF South Carolina

COUNTY OF Charleston

I, Mark W. Weeks, a Notary Public for the County of Charleston and State of South Carolina, do hereby certify that Michael T. Leonard, as Sole Member of Francon, LLC personally appeared before me this day and acknowledged the due execution of the foregoing instrument.

Witness my hand and official seal, this the 1st of December, 2015.

Notary Public
My Commission Expires:
(SEAL)

MARK W. WEEKS NOTARY PUBLIC SOUTH CAROLINA My Comm. Exp. 01-20-2019

Grantor, Grantee or Legal Representative Connected with this Transaction

Francon, LLC
Print or Type Name Here

Affidavit (Deed)

15-9845TL

CYNTHIA B FORTE

BERKELEY COUNTY

REGISTER OF DEEDS

Po Box 6122 ~ Moncks Corner, SC 29461 (843) 719-4084

***** THIS PAGE IS PART OF THE INSTRUMENT - DO NOT REMOVE *****

***** ELECTRONICALLY RECORDED DOCUMENT *****

Instrument #:	2016028701		
Receipt Number:	32333	**Return To:**	
Recorded As:	EREC-MORTGAGE		
Recorded On:	September 06, 2016		
Recorded At:	09:01:39 AM	**Received From:**	CSC
Recorded By:	CATHY MILLS	**Parties:**	
Book/Page:	RB 2264: 916 - 927		Direct- HARRIS INVESTMENT HOLDINGS LLC
Total Pages:	12		Indirect- BRANCH BANKING AND TRUST COMPANY

***** EXAMINED AND CHARGED AS FOLLOWS *****

Recording Fee:	$17.00
Tax Charge:	$0.00

Cynthia B. Forte

Cynthia B Forte - Register of Deeds

10

Return to:
Branch Banking and Trust Company
Two Seventy One 17th Street
Suite 900
Atlanta, Georgia 30365
Attn: Allen Phinney

STATE OF SOUTH CAROLINA)
)
COUNTY OF BERKELEY)

MORTGAGE OF REAL ESTATE AND SECURITY AGREEMENT
(Collateral Includes Fixtures)

THIS MORTGAGE OF REAL ESTATE AND SECURITY AGREEMENT (the "Mortgage"), made this 18th day of August, 2016, by **HARRIS INVESTMENT HOLDINGS, LLC** ("Mortgagor"), a Georgia limited liability company, whose primary address is 2650 Holcomb Bridge Road, Suite 630, Alpharetta, Georgia 30022, and granted and given to **BRANCH BANKING AND TRUST COMPANY** (the "Mortgagee"), a corporation organized and existing under the laws of the State of North Carolina, whose business address is Two Seventy One 17th Street, Suite 900, Atlanta, Georgia 30363

WHEREAS, Mortgagor is indebted to Mortgagee, as evidenced by a certain promissory note dated the date hereof, executed in favor of Mortgagee in the principal sum of One Million and No/100 Dollars ($1,000,000 00), plus interest thereon, and any renewals, extensions, modifications or substitutions thereof, the terms of which are incorporated herein by reference Where used herein, the term "Note" or "Note(s)" shall be deemed to include the note above described, along with any other notes or other documents now or hereafter evidencing any debt whatsoever incurred by Mortgagor or Borrower and payable to Mortgagee, including without limitation all indebtedness and obligations of the Mortgagor or Borrower to Mortgagee (or an affiliate of Mortgagee) under any interest rate swap transactions, interest rate cap and/or floor transactions, interest rate collar transactions, swap agreements (as defined in 11 U.S.C. § 101) or other similar transactions or agreements, including without limitation any ISDA Master Agreement executed by the Mortgagor or Borrower and all Schedules and Confirmations entered into in connection therewith, hereinafter collectively referred to as a "Hedge Agreement", the terms of which are incorporated herein by reference

NOW, THEREFORE, KNOW ALL MEN BY THESE PRESENTS that the Mortgagor, for and in consideration of the aforesaid indebtedness and in order to secure the payment thereof together with any renewals or extensions or modifications thereof, and also to secure in accordance with § 29-3-50, as amended, of the Code of Laws of South Carolina (1976) or any such successor statute as may apply:

1 All future advances and readvances that may subsequently be made to Mortgagor evidenced by the Note(s) and by all renewals and extensions thereof;

2. Any indebtedness indicated below:
☐ Construction Loan. If this box is marked, this Mortgage is made for the purpose of erecting, improving or adding to a building on the Property or improving the Property;

☐ Additional Indebtedness. If box is checked, this Mortgage is made for _____ and _____.

3 All other indebtedness of Mortgagor or Borrower to Mortgagee, now or hereafter existing, whether direct or indirect, the maximum amount of all indebtedness outstanding at any one time secured hereby not to exceed $1,000,000.00 plus interest thereon (which interest may be deferred, accrued, or capitalized; provided, however, Mortgagee shall not be required to defer, accrue or capitalize such interest except as provided for in the Note(s)), all charges and expenses of collection incurred by Mortgagee including Court costs and reasonable attorneys' fees, has granted, bargained, sold, assigned, released and hypothecated and does by these presents grant, bargain, sell, assign, release and hypothecate unto the Mortgagee, its successors and assigns the following described property:

See property description on Exhibit A attached hereto and incorporated herein.

Together with all and singular improvements, buildings, fixtures and accessions thereto thereon, and the rights, members, hereditaments and appurtenances to the same belonging or in any way appertaining including without limitation all rents, issues, and profits therefrom (provided, however that, unless otherwise agreed, Mortgagor shall be entitled to collect and retain such rents, issues, and profits until default hereunder); all rights of way; all water, oil

gas and mineral rights; all timber-to-be-cut all heating, plumbing, and lighting fixtures and equipment now or hereafter attached to or used in connection with the real estate herein described (collectively the "Property").

As additional consideration for the Note(s) and other valuable consideration received, Mortgagor hereby grants and conveys unto Mortgagee for the benefit of Mortgagee all of Mortgagor's rights as a declarant or developer under any Declaration of Condominium, Homeowners' Association, commercial property owner's association or similar organization or association now or hereafter in effect with respect to the Property.

TO HAVE AND TO HOLD, all the Property unto Mortgagee, its successors and assigns forever

The Mortgagor represents, warrants and covenants that Mortgagor is lawfully seized of the Property in fee simple absolute (or such other estate; if any, as is stated hereinbefore), that Mortgagor has good, right, and lawful authority to grant, sell, convey, assign, hypothecate or encumber the same, and that the Property is free and clear of all liens and encumbrances whatsoever except as listed in the title opinion or title insurance policy which Mortgagee has obtained in the transaction in which Mortgagee obtained this Mortgage The Mortgagor further covenants to warrant and forever defend title to Property conveyed unto Mortgagee, from and against all persons whomsoever lawfully claiming the same or any part thereof.

The Mortgagor (and where more than one, each jointly and severally) covenants and agrees as follows:

1 PAYMENT AND PERFORMANCE. That if Mortgagor is a maker or obligor of the Note(s), Mortgagor will promptly pay the principal of and interest on the indebtedness evidenced by the Note(s) and any subsequent note or agreement evidencing additional indebtedness, at the time and in the manner therein provided Mortgagor shall timely pay and perform any obligation, covenant or warranty contained not only in this Mortgage but also any other mortgage, or writing which gives rise to, or which may constitute a lien upon any of the Property Upon request of Mortgagee, Mortgagor promptly shall furnish satisfactory evidence of such payment or performance. Mortgagor shall not enter into, terminate, cancel or amend any material lease or contract affecting the Property or any part thereof without the prior written consent of Mortgagee Time is of the essence in this Mortgage.

2 DUTY TO PAY TAXES, PREMIUMS, APPRAISALS Mortgagor will pay as they become due all mortgage loan insurance premiums, taxes, assessments, water rates, and other governmental or municipal charges, fines or impositions, assessed against the property hereby mortgaged Upon demand of Mortgagee, Mortgagor shall deposit with Mortgagee or add to each payment required under the Note(s) or related loan documents the amount estimated by Mortgagee to be sufficient to enable Mortgagee to pay as they become due all taxes, charges, assessments, and insurance premiums which Mortgagor is required to pay Further, any deficiency occasioned by an insufficiency of such additional payments shall be deposited by Mortgagor with Mortgagee upon demand. Mortgagor agrees to pay for any new appraisal on the Property required by law or regulation, in connection with any restructure of the indebtedness secured hereby or upon foreclosure If Mortgagor fails to make any payments provided for in this section or any other payments for taxes, assessments, or the like, Mortgagee may pay the same, and all sums so paid shall bear interest at the same rate as the principal debt secured hereby (from the date of such advance) and shall be secured by this Mortgage Should Mortgagee at any time in good faith believe that (i) the fair market value of the Property has declined below the appraised value utilized by Mortgagee on the date of this instrument or the date of any renewal of the Note(s) or related loan documents described herein; (ii) any applicable law or regulation require Mortgagee to obtain a current appraisal of the Property; (iii) upon any event of default, forbearance or restructure of the indebtedness secured; or (iv) any condemnation of or material damage to the Property, Mortgagee may, after notice to Mortgagor or Borrower as appropriate, order an appraisal at Mortgagor's or Borrower's expense from an appraiser chosen by Mortgagee. Mortgagor and/or Borrower shall cooperate fully with any such appraiser in connection with the preparation the appraisal. Mortgagor shall not initiate or acquiesce in a change in the zoning classification of the Property or make or permit any structural alternation thereof without Mortgagee's prior written consent.

3 DUTY TO MAINTAIN Mortgagor will keep the Property in as good order and condition as it is now, reasonable wear and tear excepted, maintain the Property in habitable condition, make all repairs and perform all maintenance necessary to preserve its value, and will not commit or permit any waste thereof. Mortgagee may at any reasonable time and from time to time make or cause to be made reasonable entries upon, investigations, and inspections of the Property, including without limitation any inspections or investigations such as sampling and testing which may be necessary or desirable to review compliance with Environmental Laws

4 PROPERTY INSURANCE. The following provisions relating to insuring the Property are a part of this Mortgage:

(a) Maintenance of Insurance Mortgagor shall procure and maintain policies of fire insurance with standard extended coverage endorsements on a fair value basis for the full insurable value covering all improvements on the Property in an amount sufficient to avoid application of any coinsurance clause, and with a standard mortgagee clause in favor of Mortgagee Mortgagor shall also procure and maintain comprehensive general liability insurance in such coverage amounts as Mortgagee may request, with Mortgagee being named as additional insured in such liability insurance policies. Additionally, Mortgagor shall maintain such other insurance, including but not limited to hazard, business interruption, and boiler insurance, as Mortgagee may reasonably require. Policies shall be written in form, amounts, coverages and basis reasonably acceptable to Mortgagee and issued by a company or companies reasonably acceptable to Mortgagee. All policies shall provide that the policies

shall not be invalidated by any waiver of the right of subrogation by any insured and shall provide that the carrier shall have no right to be subrogated to Mortgagee Mortgagor, upon request of Mortgagee, will deliver to Mortgagee from time to time the policies or certificates of insurance in form satisfactory to Mortgagee, including stipulations that coverages will not be cancelled or diminished without at least thirty (30) days prior written notice to Mortgagee. Each insurance policy also shall include an endorsement providing that coverage in favor of Mortgagee will not be impaired in any way by any act, omission or default of Mortgagor or any other person. Should the Property be located in an area designated by the Administrator of the Federal Emergency Management Agency as a special flood hazard area, Mortgagor agrees to obtain and maintain Federal Flood Insurance, if available, for the full unpaid principal balance of the loan and any prior liens on the property securing the loan, up to the maximum policy limits set under the National Flood Insurance Program, or as otherwise required by Mortgagee, and to maintain such insurance for the term of the loan

(b) Application of Proceeds. Mortgagor shall promptly notify Mortgagee of any loss or damage to the Property. Mortgagee may make proof of loss if Mortgagor fails to do so within fifteen (15) days of the casualty Whether or not Mortgagee's security is impaired, Mortgagee may, at Mortgagee's election, receive and retain the proceeds of any insurance and apply the proceeds to the reduction of the Note(s), payment of any lien affecting the Property, or the restoration and repair of the Property If Mortgagee elects to apply the proceeds to restoration and repair, Mortgagor shall repair or replace the damaged or destroyed Improvements in a manner satisfactory to Mortgagee. Mortgagee shall, upon satisfactory proof of such expenditure, pay or reimburse Mortgagor from the proceeds for the reasonable cost of repair or restoration if Mortgagor is not in default under this Mortgage Any proceeds which have not been disbursed within 180 days after their receipt and which Mortgagee has not committed to the repair or restoration of the Property shall be used first to pay any amount owing to Mortgagee under this Mortgage, then to pay accrued interest, and the remainder, if any, shall be applied to the principal balance of the Note(s). If Mortgagee holds any proceeds after payment in full of the Note(s), such proceeds shall be paid to Mortgagor as Mortgagor's interests may appear.

(c) Unexpired Insurance at Sale Any unexpired insurance shall inure to the benefit of, and pass to, the purchaser of the Property covered by this Mortgage at any trustee's sale or other sale held under the provisions of this Mortgage, or at any foreclosure sale of such Property.

(d) Mortgagor's Report on Insurance Upon request of Mortgagee, however not more than once a year, Mortgagor shall furnish to Mortgagee a report on each existing policy of insurance showing: (1) the name of the insurer; (2) the risks insured; (3) the amount of the policy; (4) the property insured, the then current replacement value of such property, and the manner of determining that value; and (5) the expiration date of the policy Mortgagor shall, upon request of Mortgagee, have an independent appraiser satisfactory to Mortgagee determine the cash value replacement cost of the Property.

5 CONDEMNATION AWARD Mortgagor shall immediately notify Mortgagee in writing should all or any part of the Property become subject to any condemnation or expropriation proceedings or other similar proceedings, including without limitation, any condemnation, confiscation, eminent domain, inverse condemnation or temporary requisition or taking of the mortgaged Property, or any part of the Property. Mortgagor further agrees to promptly take such steps as may be necessary and proper within Mortgagee's sole judgment and at Mortgagor's expense, to defend any such condemnation or expropriation proceedings and obtain the proceeds derived from such proceedings. Mortgagor shall not agree to any settlement or compromise or any condemnation or expropriation claim without Mortgagee's prior written consent Mortgagee may, at Mortgagee's sole option, elect to participate in any such condemnation or expropriation proceedings and be represented by counsel of Mortgagee's choice Mortgagor agrees to provide Mortgagee with such documentation as Mortgagee may request to permit Mortgagee to so participate and to reimburse Mortgagee for Mortgagee's costs associated with Mortgagee's participation, including Mortgagee's reasonable attorneys' fees. If Mortgagor fails to defend any such condemnation or expropriation proceedings to Mortgagee's satisfaction, Mortgagee may undertake the defense of such a proceeding for and on behalf of Mortgagor. To this end, Mortgagor irrevocably appoints Mortgagee as Mortgagor's agent and attorney-in-fact, such agency being coupled with an interest, to bring, defend, adjudicate, settle, or otherwise compromise such condemnation or expropriation claims; it being understood, however, that, unless one or more Events of Default (other than the condemnation or expropriation of the Property) then exists under this Mortgage, Mortgagee will not agree to any final settlement or compromise of any such condemnation or expropriation claim without Mortgagor's prior approval, which approval shall not be unreasonably withheld.

Mortgagee shall have the right to receive all proceeds derived or to be derived from the condemnation, expropriation, confiscation, eminent domain, inverse condemnation, or any permanent or temporary requisition or taking of the Property, or any part or parts of the Property ("condemnation proceeds"). In the event that Mortgagor should receive any such condemnation proceeds, Mortgagor agrees to immediately turn over and to pay such proceeds to Mortgagee. All condemnation proceeds, which are received by, or which are payable to either Mortgagor or Mortgagee, shall be applied, at Mortgagee's sole option and discretion, and in such manner as Mortgagee may determine (after payment of all reasonable costs, expenses and attorneys' fees necessarily paid or incurred by Mortgagor and/or Mortgagee), for the purpose of: (a) replacing or restoring the condemned, expropriated, confiscated, or taken Property; or (b) reducing the then outstanding balance of the Note(s), together with interest thereon, with such payments being applied in the manner provided in this Mortgage Mortgagee's receipt of such condemnation proceeds and the application of such proceeds as provided in this Mortgage shall not affect the lien of this Mortgage.

6 ASSIGNMENT OF LEASES AND RENTS Mortgagor hereby presently, absolutely, and unconditionally assigns all of the leases, rents, issues, and profits of the Property to Mortgagee and the absolute, unconditional, and continuing right to receive and collect all of the leases, rents, issues and profits of the Property, it being intended that this assignment constitutes a present, outright, continuing and absolute assignment and not an assignment for additional security only Mortgagee may at any time collect any and all rents, issues and profits whether or not any default has occurred hereunder, and should legal proceedings be instituted pursuant to this instrument, then Mortgagee shall have the right to have appointed a receiver of the rents, issues, and profits, who, after deducting all charges and expenses attending such proceedings and the execution of his trust as receiver, shall apply the residue of the rents, issues, and profits toward the payment of the debt secured hereby Mortgagor hereby appoints Mortgagee as Mortgagor's attorney-in-fact to collect any rents and profits, with or without suit, and to apply the same, less expenses of collection to any indebtedness owing under the Note(s) in any manner as Mortgagee may determine Such appointment shall be a power coupled with an interest and shall be irrevocable until the indebtedness and obligations secured hereby have been paid in full Notwithstanding the foregoing, Mortgagee hereby grants to Mortgagor a revocable license to collect and receive all leases, rents, issues and profits of the Property until the occurrence and during the continuance of an Event of Default at which time such license will automatically cease and terminate and will be void and of no further effect Upon the occurrence and during the continuance of an Event of Default, any portion of the leases, rents, issues and profits received and held by Mortgagor shall be held in trust for the benefit of Mortgagee for use in the payment of any indebtedness owing under the Note(s)

7 SECURITY INTEREST. All fixtures, appliances and equipment which comprise a part of the Property shall, as far as permitted by law, be deemed to be affixed to the aforesaid land and conveyed therewith As to the balance of the fixtures, this Mortgage shall be considered to be a security agreement which creates a security interest in such fixtures, appliances and equipment for the benefit of Mortgagee Mortgagor hereby grants to Mortgagee a security interest in such fixtures, appliances and equipment and all of the rights and remedies of a secured party under the South Carolina Uniform Commercial Code Mortgagor hereby authorizes Mortgagee, concurrently with the execution of this Mortgage and upon the request of Mortgagee from time to time hereafter, to file all UCC financing statements and other documents reasonably required to perfect and maintain the security interest created hereby. Mortgagor hereby irrevocably (as long as the Note(s) remains unpaid) makes, constitutes and appoints Mortgagee as the true and lawful attorney-in-fact of Mortgagor to file any financing statement, continuation financing statement or similar document required to perfect or continue such security interests To the extent permitted by law, this Mortgage shall be a financing statement and fixture filing sufficient to perfect and maintain any security interest created hereby in the Property and its proceeds For such purpose, the Mortgagor is the Debtor and the Mortgagee is the Secured Party each having the addresses set forth above

8 PAYMENT OF OTHER OBLIGATIONS Mortgagor will pay as they become due the principal and interest on all notes, obligations, contracts or agreements, secured by any mortgage, lien, or security interest having priority over this mortgage as to the Property described herein. If Mortgagor fails to make any of the payments as provided in this section, Mortgagee may pay the same and add any amounts so paid to the principal debt, and all sums so paid shall bear interest at the same rate as the principal debt secured hereby and shall be secured by this mortgage

9 MORTGAGOR'S CONTINUING OBLIGATION This Mortgage shall remain as security for full payment of the obligations under this Mortgage and for performance of any indebtedness evidenced by the Note(s) or related loan documents, notwithstanding any of the following: (a) the sale or release of all or any part of the Property; (b) the assumption by another party of Mortgagor's obligations under this Mortgage, the Note(s) or related loan documents; (c) the forbearance or extension of time for payment of the Note(s) or for performance of any obligations under this Mortgage, the Note(s) or related loan documents, whether granted to Mortgagor or to a subsequent owner of the Property; or (d) the release of any party who has assumed payment of the Note(s) or who assumed any other obligations under this Mortgage, the Note(s) or related loan documents None of the foregoing shall, in any way, affect the full force and effect of the lien of this Mortgage or impair Mortgagee's right to a deficiency judgment in the event of foreclosure against Mortgagor or any party who had assumed payment of the Note(s) or who assumed any other obligations the performance of which is secured by this Mortgage

10. COMPLIANCE WITH ENVIRONMENTAL LAWS; INDEMNITY Mortgagor for itself, its successors and assigns represents, warrants and agrees that (a) neither Mortgagor nor any other person has generated, manufactured, stored, treated, processed, released, discharged or disposed of any Hazardous Substances on the Property or received any notice from any Governmental Authority (hereinafter defined) or other person with regard to a release of Hazardous Substances on, from or otherwise affecting the Property; (b) neither Mortgagor or any other person has violated any applicable Environmental Laws (hereinafter defined) relating to or affecting the Property; (c) the Property is presently being operated in compliance with all Environmental Laws; there are no circumstances presently existing upon or under the Property, or relating to the Property which may violate any applicable Environmental Laws, and there is not now pending, or threatened, any action, suit, investigation or proceeding against Mortgagor relating to the Property (or against any other party relating to the Property) seeking to enforce any right or remedy under any of the Environmental Laws; (d) except in strict compliance with Environmental Laws, the Property shall be kept free of Hazardous Substances and shall not be used to generate, manufacture, transport, treat, store, handle, dispose, process or release Hazardous Substances; (e) Mortgagor shall at all times comply with and ensure compliance by all other parties with all applicable Environmental Laws and shall keep the Property free and clear of any liens imposed pursuant to any applicable Environmental Laws; (f) Mortgagor has obtained and will at all times continue to obtain and/or maintain all licenses, permits and other directives from any Governmental Authority necessary to comply with Environmental Laws; Mortgagor is in full compliance with

the terms and provisions of the Environmental Requirements (hereinafter defined) and will continue to comply with the terms and provisions of the Environmental Requirements; (g) Mortgagor shall immediately give Mortgagee oral and written notice in the event that Mortgagor receives any notice from any Governmental Authority or any other party with regard to any release or storage of Hazardous Substances on, from or affecting the Property and shall conduct and complete all investigations, sampling, and testing, and all remedial, removal, and other actions necessary or required to clean up and remove all Hazardous Substances on, from or affecting the Property in accordance with all applicable Environmental Laws Mortgagor hereby agrees to indemnify Mortgagee and hold Mortgagee harmless from and against any and all losses, liabilities, damages, injuries (including, without limitation, reasonable attorneys' fees) and claims of any and every kind whatsoever paid, incurred or suffered by, or asserted against Mortgagee for, with respect to, or as a direct or indirect result of (i) the presence on, or under, or the escape, spillage, emission or release on or from the Property of any Hazardous Material regardless of whether or not caused by or within the control of Mortgagor, (ii) the violation of any Environmental Laws or Environmental Requirements relating to or affecting the Property, whether or not caused by or within the control of Mortgagor, (iii) the failure by Mortgagor to comply fully with the terms and provisions of this paragraph, or (iv) any warranty or representation made by Mortgagor in this paragraph being false or untrue in any material respect The obligations and liabilities of Mortgagor under this paragraph shall survive the foreclosure of this Mortgage, the delivery of a deed in lieu of foreclosure, the cancellation of the Note(s); or if otherwise expressly permitted in writing by the Mortgagee, the sale or alienation of any part of the Property

In the event that any of Mortgagor's representations or warranties shall prove to be materially false or Mortgagor fails to satisfy any Environmental Requirement, Mortgagee, in its sole discretion, may (i) choose to assume compliance with governmental directives and Mortgagor agrees to reimburse Mortgagee for all costs, expenses (including all reasonable attorneys' fees, whether in-house or independent), fines, penalties, judgments, suits, or liabilities whatsoever associated with such compliance; or (ii) seek all legal and equitable remedies available to it including, but not limited to, injunctive relief compelling Mortgagor to comply with all Environmental Requirements relating to the Property Mortgagee's rights hereunder shall be in addition to all rights granted under the Note(s) or related loan documents and payments by Mortgagor under this provision shall not reduce Mortgagor's obligations and liabilities thereunder In the event Mortgagee undertakes compliance with Environmental Requirements which Mortgagor failed to perform or which Mortgagee determines is necessary to sell all or any part of the Property, Mortgagor authorizes Mortgagee and/or Mortgagee's agents to prepare and execute on Mortgagor's behalf, any manifest or other documentation relating to the removal and/or disposal of any Hazardous Substances, from, at or on the Property. Mortgagor acknowledges that Mortgagee does not own, or have a security interest in, any Hazardous Substances which exist on, originate from or affect the Property All amounts expended by Mortgagee in connection with the exercise of its rights hereunder (including reasonable attorneys' fees and the fees of any environmental consultants) shall become part of the indebtedness secured by this Mortgage

For purposes of this Mortgage: "Environmental Laws" means the Comprehensive Environmental Response, Compensation and Liability Act, the Hazardous Materials Transportation Act, the Resource Conservation and Recovery Act, any "Super Fund" or "Super Lien" law, or any other federal, state, or local law, regulation or decree regulating, relating to or imposing liability or standards of conduct concerning any Hazardous Substances "Environmental Requirement" means any administrative orders, directives, judgments, consent orders, permits, licenses, authorizations, consents, settlements, agreements or other formal or informal directions or guidance issued by or entered into with any Governmental Authority or private party, including the provisions of any Environmental Law, which obligate or commit Mortgagor to investigate, remediate, treat, monitor, dispose or remove Hazardous Substances "Governmental Authority" means any federal, state or local agency, department, court or other administrative legislative or regulatory federal, state or local governmental body, or any private individual or entity acting in place of such entities "Hazardous Substances" means and includes petroleum products, any flammable explosives, radioactive materials, asbestos or any material containing asbestos, and/or any hazardous, toxic or dangerous waste, substance or material defined as such in the Environmental Laws

11. PAYMENT OF EXPENSES That in the event that Mortgagor shall default in its obligations under this Mortgage, the Note(s) or related loan documents, and Mortgagee employs an attorney to assist in the collection of the indebtedness or to enforce compliance of Mortgagor with any of the provisions of this Mortgage, the Note(s) or related loan documents or in the event Mortgagee shall become a party to any suit or legal proceeding (including any proceeding conducted before any United States Bankruptcy Court) concerning the Property, concerning the lien of this Mortgage, concerning collection of the indebtedness or concerning compliance by Mortgagor or other borrower named herein with any of the provisions of this Mortgage, the Note(s) or related loan documents, Mortgagor shall pay Mortgagee's reasonable attorneys' fees and all of the costs that may be incurred, and such fees and costs shall be secured by this Mortgage and its payment enforced as if it were a part of the indebtedness Mortgagor shall be liable for such attorneys' fees and costs whether or not any suit or proceeding is commenced

12 RELEASES; NO MARSHALLING. That to the extent permitted by law, Mortgagee may grant releases at any time and from time to time of all or any portion of the Property (whether or not such releases are required by agreement among the parties) agreeable to Mortgagee without notice to or the consent, approval or agreement of other parties and interests, including junior lienors and purchasers subject to the lien of this Mortgage, and such releases shall not impair in any manner the validity of or priority of this Mortgage on that portion of the Property remaining subject to this Mortgage, nor release Mortgagor from personal liability for the indebtedness Notwithstanding the existence of any other security interests in the Property held by Mortgagee or by any other party, Mortgagee shall have the right to determine the order in which any or all of the Property shall be subjected to the remedies available to Mortgagee, and Mortgagee shall further have the right to determine the order in which any or all portions of the indebtedness are satisfied from the proceeds realized upon the exercise of any remedy it has

Mortgagor, or any party who consents to this, or any party who has actual or constructive notice hereof, hereby waives any and all rights to require the marshalling of assets in connection with the exercise of any of the remedies permitted by applicable law or provided herein.

13 INDEMNIFICATION IN EVENT OF ADVERSE CLAIMS In the event that Mortgagee voluntarily or otherwise shall become a party to any suit or legal proceeding involving the Property, it shall be held harmless and shall be indemnified by Mortgagor for any amounts paid, including all costs, charges and attorneys' fees incurred in any such suit or proceeding, and the same shall be secured by this Mortgage and payable upon demand

14 INSPECTION. Mortgagee may at any reasonable time and from time to time make or cause to be made reasonable entries upon, investigations, and inspections of the Property, including without limitation any inspections or investigations such as sampling and testing which may be necessary or desirable to review compliance with Environmental Laws.

15. EVENTS OF DEFAULT Subject to any notice and cure periods, if any, contained in the Note(s) or any related loan document executed by the Mortgagor or Borrower and in this Mortgage, Mortgagor shall be in default under this Mortgage upon the occurrence of any of the following:

(a) Should the Mortgagor or Borrower fail to pay any of the indebtedness secured hereby on the date due or to perform any covenant or warranty in this Mortgage, in the Note(s) or any related loan document in any Loan Agreement, Hedge Agreement, Business Card Plan Agreement, or other note or instrument of Mortgagor or Borrower to Mortgagee; or in any contract between Mortgagor and/or Borrower and Mortgagee; or in any contract between any third party and Mortgagee made for the benefit of Mortgagor; or

(b) Should any warranty, representation, report or statement made or furnished to Mortgagee by or on behalf of Mortgagor or Borrower in connection with the indebtedness secured hereby prove to have been false or misleading in any material respect when made or furnished; or

(c) Should Mortgagor suffer any material loss, theft, damage or destruction to the Property which is not covered by insurance, or upon the assertion or filing of any levy, seizure, mechanic's or materialman's lien or attachment thereof or thereon; or

(d) The death, dissolution, termination of existence, insolvency, business failure or the appointment of a receiver for any part of the Property or other assets of the Mortgagor, Borrower or any co-maker, endorser, guarantor or surety for the indebtedness, or should any of the same make an assignment for the benefit of creditors or admit the inability to pay its debts in the ordinary course of business; or

(e) Failure of any corporate Mortgagor, Borrower or any co-maker, endorser, guarantor or surety for Mortgagor or Borrower to maintain its legal existence in good standing; or

(f) The entry of any final monetary judgment which is not covered by insurance or pending appeal, or the assessment of unpaid taxes against Mortgagor or Borrower or filing of any tax, mechanic's or materialman's lien against the Property; or upon the issuance of any writ of garnishment or attachment is levied against the Property for debts due or rights of Mortgagor or Borrower or any guarantor; or

(g) The sale (including sale by land contract upon delivery of possession), transfer or encumbrance of all or any part of the Property or any interest therein, or any change in the ownership or control of Mortgagor or Borrower, made without Mortgagee's prior written consent; or

(h) Should Mortgagee determine that its liens and security interests in the Property are invalid, unperfected, unenforceable, or failing to have the priority required by Mortgagee; or should the Property decline in fair market or appraised value below the amount required at the execution hereof; or should Mortgagee in good faith determine that there has been a material adverse change in the financial condition or business operations of Mortgagor, Borrower, or any co-maker, endorser, guarantor or surety; or

(i) Should Mortgagor default under any loan, extension of credit, security agreement, purchase or sales agreement, or any other agreement, in favor of any other creditor or person that may materially affect any of Mortgagor's property or Mortgagor's ability to repay the Note(s) or Mortgagor's ability to perform Mortgagor's obligations under this Mortgage or any of the related documents: or

(j) Any change in any zoning ordinance or regulation or any other public restriction is enacted, adopted or implemented, that limits or defines the uses which may be made of the Property such that the present or intended use of the Property, as specified in any of the related documents, would be in violation of such zoning ordinance or regulation or public restriction, as changed

RIGHT TO CURE If Mortgagor or Borrower has a right to cure and if any default, other than a default in payment, is curable in the determination of Mortgagee and if Mortgagor has not been given a notice of a breach of the same provision of this Mortgage within the preceding twelve (12) months, it may be cured if Mortgagor, after Mortgagee sends written notice to Mortgagor demanding cure of such default: (1) cures the default to the satisfaction of Mortgagee within thirty (30) days; or (2) if the cure requires more than thirty (30) days, immediately initiates steps

which Mortgagee deems in Mortgagee 's sole discretion to be sufficient to cure the default and thereafter continues and completes all reasonable and necessary steps sufficient to produce compliance as soon as reasonably practical

16 RIGHTS AND REMEDIES. That Mortgagor shall hold and enjoy the Property until there is a default under this mortgage or in the Note(s) secured hereby If there is a default in any of the terms, conditions or covenants of this mortgage or of any of the Note(s) secured hereby, then at the option of Mortgagee, and without prior notice to Mortgagor, all sums then owing by Mortgagor, or Borrower or any other obligor on the Note(s) to Mortgagee shall become immediately due and payable, Mortgagee may in addition pursue all other rights and remedies available against Mortgagor, Borrower or any other obligor under the Note(s) under applicable provisions of South Carolina law and of any other law governing the Note(s) This mortgage shall remain as security for full payment of all indebtedness evidenced by the Note(s) and for performance of any obligation evidenced by the Note(s) or any document executed in connection therewith, notwithstanding the sale or release of any or all of the Property, the assumption by another party of Mortgagor's obligations under the Note(s) or this mortgage, the forbearance or extension of time or payment of the indebtedness evidenced by the Note(s) or any one of same or the release of any party who has assumed or incurred any obligation for the repayment of any indebtedness evidenced by the Note(s) and secured by this mortgage. None of the foregoing shall in any way affect the full force and effect of the lien of this mortgage or impair Mortgagee's right to any other remedies against Mortgagor, Borrower or any other obligors under the Note(s). Any forbearance by Mortgagee in exercising any right or remedy hereunder or otherwise afforded by applicable law, shall not be a waiver of or preclude the exercise of any such right or remedy The procurement of insurance or the payment of taxes or other liens or charges by Mortgagee shall not be a waiver of Mortgagee's right to accelerate maturity of the indebtedness evidenced by the Note(s) secured hereby Time is of the essence the payment or performance of any of the obligations, or of any covenant or warranty contained in this mortgage, or in any of the Note(s) or any other document related thereto

In addition, if a default shall have occurred and be continuing, Mortgagee, upon application to a court of competent jurisdiction, shall be entitled as a matter of right without notice and without regard to the occupancy or value of any security for the Note(s) or the solvency of any party bound for its payment, to the appointment of a receiver to take possession of and operate the Property and collect and apply the revenues, and Mortgagor hereby consents thereto The receiver shall have all of the rights and powers permitted under the laws of the State of South Carolina. Mortgagor will pay to Mortgagee upon demand, all expenses, including receivers' fees, reasonable attorneys' fees, costs and agent's compensation, all incurred pursuant to such appointment, all of which shall be considered a part of the Note(s) secured hereby In the case of any receivership, insolvency, bankruptcy, reorganization, arrangement, adjustment, composition or other proceedings affecting Mortgagor or the creditors or property of Mortgagor, Mortgagee, to the extent permitted by law, shall be entitled to file such proofs of claim and other documents as may be necessary or advisable in order to have the claims of Mortgagee allowed in such proceedings for the entire amount of the Note(s) at the date of the institution of such proceedings and for any additional portion of the Note(s) accruing after such date

17 DEFICIENCY That upon default hereunder, along with other remedies set out herein and in the above referenced Note(s), Mortgagee may foreclose upon the Property and ask for a deficiency judgment pursuant to §29-3-660 of the South Carolina Code of Laws (1976).

18 DUE ON SALE - CONSENT BY MORTGAGEE Mortgagee may, at Mortgagee's option, declare immediately due and payable all sums secured by this Mortgage upon the sale or transfer, without Mortgagee's prior written consent, of all or any part of the Property, or any interest in the Property A "sale or transfer" means the conveyance of Property or any right, title or interest in the Property; whether legal, beneficial or equitable; whether voluntary or involuntary; whether by outright sale, deed, installment sale contract, land contract, contract for deed, leasehold interest with a term greater than three (3) years, lease-option contract, or by sale, assignment, or transfer of any beneficial interest in or to any land trust holding title to the Property, or by any other method of conveyance of an interest in the Property If any Mortgagor is a corporation, partnership or limited liability company, transfer also includes any change in ownership of more than twenty-five percent (25%) of the voting stock, partnership interests or limited liability company interests, as the case may be, of such Mortgagor However, this option shall not be exercised by Mortgagee if such exercise is prohibited by federal law or by South Carolina law

19 RELEASE AND CANCELLATION. Upon fulfillment of all of obligations, the performance of which is secured by this Mortgage, and upon payment of the indebtedness secured hereby in full, this Mortgage and the Note(s) or related loan documents shall be marked "Satisfied" and returned to Mortgagor or Borrower, as applicable, and this conveyance shall be null and void and may be cancelled of record at the request and cost of Mortgagor, and title to the Property shall revest in Mortgagor as provided by law

20 FURTHER ASSURANCES At any time, and from time to time, upon request of Mortgagee, Mortgagor will make, execute and deliver, or will cause to be made, executed or delivered, to Mortgagee or to Mortgagee's designee, and when requested by Mortgagee, cause to be filed, recorded, refiled, or rerecorded, as the case may be, at such times and in such offices and places as Mortgagee may deem appropriate, any and all such mortgages, security agreements, financing statements, continuation statements, instruments of further assurance, certificates, and other documents as may, in the sole opinion of Mortgagee, be necessary or desirable in order to effectuate, complete, perfect, continue, or preserve (1) Mortgagor's obligations under the Note(s), this Mortgage, and any related loan documents, and (2) the liens and security interests granted in this Mortgage as first and prior liens on the Property, whether now owned or hereafter acquired by Mortgagor Unless prohibited by law or Mortgagee agrees to the contrary in writing, Mortgagor shall reimburse Mortgagee for all costs and expenses incurred in connection with the matters referred to in this paragraph

21 NOTICES Any notice required to be given under this Mortgage, including without limitation any notice of default and any notice of sale shall be given in writing, and shall be effective when actually delivered, when actually received by telefacsimile (unless otherwise required by law), when deposited with a nationally recognized overnight courier, or, if mailed, when deposited in the United States mail, as first class, certified or registered mail postage prepaid, directed to the addresses shown near the beginning of this Mortgage All copies of notices of foreclosure from the holder of any lien which has priority over this Mortgage shall be sent to Mortgagee's address, as shown near the beginning of this Mortgage. Any party may change its address for notices under this Mortgage by giving formal written notice to the other parties, specifying that the purpose of the notice is to change the party's address For notice purposes, Mortgagor agrees to keep Mortgagee informed at all times of Mortgagor's current address Unless otherwise provided or required by law, if there is more than one Mortgagor, any notice given by Mortgagee to any Mortgagor is deemed to be notice given to all Mortgagors

22. CHOICE OF VENUE. Any legal action with respect to the Note(s) evidenced by this instrument or agreement may be brought in the courts of the State of South Carolina or in the appropriate United States District Court situated in South Carolina, and Mortgagor hereby accepts and unconditionally submits to the jurisdiction of such courts Mortgagor hereby waives any objection to the laying of venue based on the grounds of forum non conveniens with respect thereto.

23. MISCELLANEOUS The captions and headings of the paragraphs of this Mortgage are for convenience only and shall not be used to interpret or define any provisions All remedies provided herein are distinct and cumulative to any other right or remedy under this Mortgage or afforded by law or equity, and may be exercised concurrently, independently or successively That the covenants herein contained shall bind, and the benefits and advantages shall inure to, the respective heirs, executors, administrators, successors, and assigns of the parties hereto Whenever used herein, the singular shall be applicable to all genders and the term "Mortgagee" shall include any payee of the indebtedness hereby secured or any transferee thereof whether by operation of law or otherwise. The liability of Mortgagor hereunder shall, if more than one, be joint and several The designations "corporate", "corporation", and "partnership" include limited liability companies and limited liability partnerships Whenever used, the singular number shall include the plural, and the plural the singular, and the use of any gender shall be applicable to all genders

24. NO WAIVER BY MORTGAGEE Mortgagee shall not be deemed to have waived any rights under this Mortgage unless such waiver is given in writing and signed by Mortgagee No delay or omission on the part of Mortgagee in exercising any right shall operate as a waiver of such right or any other right A waiver by Mortgagee of a provision of this Mortgage shall not prejudice or constitute a waiver of Mortgagee's right otherwise to demand strict compliance with that provision or any other provision of this Mortgage No prior waiver by Mortgagee, nor any course of dealing between Mortgagee and Mortgagor, shall constitute a waiver of any of Mortgagee's rights or of any of Mortgagor's obligations as to any future transactions Whenever the consent of Mortgagee is required under this Mortgage, the granting of such consent by Mortgagee in any instance shall not constitute continuing consent to subsequent instances where such consent is required and in all cases such consent may be granted or withheld in the sole discretion of Mortgagee

25. NON-LIABILITY OF MORTGAGEE. The relationship between Mortgagor and Mortgagee created by this Mortgage is strictly a debtor and creditor relationship and not fiduciary in nature, nor is the relationship to be construed as creating any partnership or joint venture between Mortgagee and Mortgagor Mortgagor is exercising Mortgagor's own judgment with respect to Mortgagor's business All information supplied to Mortgagee is for Mortgagee's benefit only and no other party is entitled to rely on such information There is no duty for Mortgagee to review, inspect, supervise or inform Mortgagor of any matter with respect to Mortgagor's business. Mortgagee and Mortgagor intend that Mortgagee may reasonably rely on all information supplied by Mortgagor to Mortgagee, together with all representations and warranties given by Mortgagor to Mortgagee, without investigation or confirmation by Mortgagee and that any investigation or failure to investigate will not diminish Mortgagee's right to so rely.

26. **WAIVER OF TRIAL BY JURY. UNLESS EXPRESSLY PROHIBITED BY APPLICABLE LAW, THE MORTGAGOR HEREBY WAIVES THE RIGHT TO TRIAL BY JURY OF ANY MATTERS OR CLAIMS ARISING OUT OF THIS MORTGAGE OR ANY LOAN DOCUMENT EXECUTED IN CONNECTION HEREWITH OR OUT OF THE CONDUCT OF THE RELATIONSHIP BETWEEN THE MORTGAGOR OR BORROWER AND MORTGAGEE. THIS PROVISION IS A MATERIAL INDUCEMENT FOR MORTGAGEE TO MAKE THE LOAN SECURED BY THIS MORTGAGE. FURTHER, THE MORTGAGOR HEREBY CERTIFIES THAT NEITHER ANY REPRESENTATIVE OR AGENT OF MORTGAGEE, NOR MORTGAGEE'S COUNSEL, HAS REPRESENTED, EXPRESSLY OR OTHERWISE, THAT MORTGAGEE WOULD NOT SEEK TO ENFORCE THIS WAIVER OF RIGHT TO JURY TRIAL PROVISION IN THE EVENT OF LITIGATION. NEITHER ANY REPRESENTATIVE OR AGENT OF MORTGAGEE, NOR MORTGAGEE'S COUNSEL, HAS THE AUTHORITY TO WAIVE, CONDITION OR MODIFY THIS PROVISION.**

[Signatures on following page]

27. **WAIVER OF APPRAISAL RIGHTS.** The laws of South Carolina provide that in any real estate foreclosure proceeding a defendant against whom a personal judgment is taken or asked may within thirty days after the sale of the mortgaged property apply to the court for an order of appraisal The statutory appraisal value as approved by the court would be substituted for the high bid and may decrease the amount of any deficiency owing in connection with the transaction. **TO THE FULLEST EXTENT PERMITTED BY LAW AND AS A MATERIAL INDUCEMENT FOR MORTGAGEE TO MAKE THE LOAN, MORTGAGOR HEREBY WAIVES AND RELINQUISHES THE STATUTORY APPRAISAL RIGHTS WHICH MEANS THE HIGH BID AT THE JUDICIAL FORECLOSURE SALE WILL BE APPLIED TO THE DEBT REGARDLESS OF ANY APPRAISED VALUE OF THE MORTGAGED PROPERTY.**

IN WITNESS WHEREOF, each Mortgagor has executed this Mortgage the day and year first above written

Signed, sealed and delivered in the presence of:

WITNESSES

First Witness Print Name: Linda S. DiRoberto

Second Witness Print Name: Tom Godfrey

HARRIS INVESTMENT HOLDINGS, LLC

By _____ (SEAL)

Name: Samuel C. Harris

Title Manager

STATE OF SOUTH CAROLINA
COUNTY OF BERKELEY

The foregoing instrument was acknowledged before me this 23 day of August, 2016, by Samuel C Harris, Manager of Harris Investment Holdings, LLC, a Georgia limited liability company, on behalf of the limited liability company.

[Notary Seal]

Linda S. DiRoberto
Notary Public
My commission expires: 11-29-19
Serial number, if any:

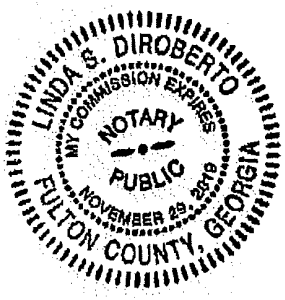


EXHIBIT A

Legal Description

Parcel #1: TMS#: 265-15-02-054

All that lot, tract, piece or parcel of land, consisting of approximately 0.92 acres, more or less, situate, lying and being in the City of Hanahan, County of Berkeley, State of South Carolina, shown and designated as Tract H on a plat entitled, "Boundary Line Adjustment Survey 5901 Loftis Road Berkeley County, South Carolina" made by Jack A. Mahony, R.L.S., S.C. Reg. 16816, dated June 24, 2005, and recorded in the Register of Deeds Office for Berkeley County, S.C. on October 18, 2005, in Plat Cabinet M, at Page 143-H. Said tract having such size, shape, location, dimensions, buttings and boundings, more or less, as will by reference to the aforementioned plat more fully appear.

BEING a portion of the same property conveyed to Francon, LLC by Deed of Paragon Resources, Inc. dated October 2, 2003, and recorded on October 8, 2003 in the RMC Office for Berkeley County, SC, in Book 3621, at Page 306.

Parcel #2: TMS#: 295-15-02-068

All that lot, tract, piece or parcel of land, consisting of approximately 0.40 acres, more or less, situate, lying and being in the City of Hanahan, County of Berkeley, State of South Carolina, shown and designated as Tract A on a plat entitled, "Boundary Line Adjustment Survey 5901 Loftis Road Berkeley County, South Carolina" made by Jack A. Mahony, R.L.S., S.C. Reg. 16816, dated June 24, 2005, and recorded in the Register of Deeds Office for Berkeley County, S.C. on October 18, 2005, in Plat Cabinet M, at Page 143-H. Said tract having such size, shape, location, dimensions, buttings and boundings, more or less, as will by reference to the aforementioned plat more fully appear.

BEING the same property (as to 0.31 ac +/-) conveyed to Francon, LLC, by Deed of Michael T. Leonard dated September 5, 2002, and recorded on October 7, 2002 in the RMC Office for Berkeley County, SC, in Book 2938, at Page 144; ALSO being a portion of the same property (as to 0.09 ac +/-) conveyed to Francon, LLC, by Deed of Paragon Resources, Inc. dated October 2, 2003, and recorded on October 8, 2003 in the RMC Office for Berkeley County, SC, in Book 3621, at Page 306.

Alamo

0068278 / Office AU # — 11-24 / 1210(8)

CASHIER'S CHECK

SERIAL #: 6827801335
ACCOUNT#: 4861-009066

Remitter: ARELIS O SANTOS GOMEZ
Purchaser: ARELIS O SANTOS GOMEZ
Purchaser Account: 3323066435
Operator I.D.: u474880
Funding Source: Cash

August 15, 2017

PAY TO THE ORDER OF ***HARRIS INVESTMEMT HOLDINGS, LLC ***

Two thousand eight hundred fifty-two dollars and no cents **$2,852.00**

Payee Address:
Memo:

VOID IF OVER US $ 2,852.00

NON-NEGOTIABLE

WELLS FARGO BANK, N.A.
5561 RIVERS AVE
NORTH CHARLESTON, SC 29406
FOR INQUIRIES CALL (480) 394-3122

NOTICE TO PURCHASER–IF THIS INSTRUMENT IS LOST, STOLEN OR DESTROYED, YOU MAY REQUEST CANCELLATION AND REISSUANCE. AS A CONDITION TO CANCELLATION AND REISSUANCE, WELLS FARGO & COMPANY MAY IMPOSE A FEE AND REQUIRE AN INDEMNITY AGREEMENT AND BOND.

Purchaser Copy

B004 M4203 70095230

Alamo

0068278 / Office AU # — 11-24 / 1210(8)

CASHIER'S CHECK

SERIAL #: 6827801356
ACCOUNT#: 4861-009066

Remitter: ARELIS O SANTOS GOMEZ
Purchaser: ARELIS O SANTOS GOMEZ
Purchaser Account: 6804303136
Operator I.D.: u536354
Funding Source: Cash

September 18, 2017

PAY TO THE ORDER OF ***HARRIS INVESTMENT HOLDINGS LLC***

Two thousand eight hundred fifty-two dollars and no cents **$2,852.00**

Payee Address:
Memo:

VOID IF OVER US $ 2,852.00

NON-NEGOTIABLE

WELLS FARGO BANK, N.A.
5561 RIVERS AVE
NORTH CHARLESTON, SC 29406
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Purchaser Copy

3004 M4203 70095230

Alamo

0068278 / Office AU # — 11-24 / 1210(8)

CASHIER'S CHECK

SERIAL #: 6827801365
ACCOUNT#: 4861-009066

Remitter: ARELIS O SANTOS GOMEZ
Purchaser: ARELIS O SANTOS GOMEZ
Purchaser Account: 5090442558
Operator I.D.: u474880
Funding Source: Cash

October 10, 2017

PAY TO THE ORDER OF ***HARRIS INVESTMENT HOLDINGS, LLC ***

Two thousand eight hundred fifty-two dollars and no cents **$2,852.00**

Payee Address:
Memo:

VOID IF OVER US $ 2,852.00

NON-NEGOTIABLE

WELLS FARGO BANK, N.A.
5561 RIVERS AVE
NORTH CHARLESTON, SC 29406
FOR INQUIRIES CALL (480) 394-3122

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Purchaser Copy

11

004 M4203 70269317

3001

Date 10-1-2017
To Rent Harris
For Rent 8-2017
Previous Balance
Deposit
New Balance
This Check 1,114 00
Balance Forward

Latino
MIX

3002

Date 10-1-2017
To Rent HARRIS
For Rent 9-2017
Previous Balance
Deposit
New Balance
This Check 1,114.00
Balance Forward

Latino MIX

3003

Date 10-1-2017
To Harris
For Rent 10-2017
Previous Balance
Deposit
New Balance
This Check 1,114.00
Balance Forward

Latino MIX

12

[redacted]

SIGNATURE CONFIRMATION NUMBER:
2315 1670 0000 0776 7022

PRIORITY MAIL

NORTH CHARLESTON
6401 RIVERS AVE
NORTH CHARLESTON
SC
29406-9996
4514870247
09/18/2017 (800)275-8777 3:40 PM

Product Description	Sale Qty	Final Price
PM 3-Day Window FR Env	1	$6.65
(Domestic)		
(ALPHARETTA, GA 30022)		
(Flat Rate)		
(Expected Delivery Day)		
(Thursday 09/21/2017)		
Insurance	1	$0.00
(Up to $50.00 included)		
Sign Conf	1	$2.90
(@USPS Signature Tracking #)		
(23151670000007767022)		
Total		$9.55
Cash		$20.00
Change		($10.45)

Includes up to $50 insurance

In a hurry? Self-service kiosks offer quick and easy check-out. Any Retail Associate can show you how.

Text your tracking number to 28777 (2USPS) to get the latest status. Standard Message and Data rates may apply. You may also visit USPS.com USPS Tracking or call 1-800-222-1811.

****
BRIGHTEN SOMEONE'S MAILBOX. Greeting cards available for purchase at select Post Offices.
****

Save this receipt as evidence of insurance. For information on filing an insurance claim go to https://www.usps.com/help/claims.htm.

Order stamps at usps.com/shop or call 1-800-Stamp24. Go to usps.com/clicknship to print shipping labels with postage. For other information call 1-800-ASK-USPS.

****
Get your mail when and where you want it with a secure Post Office Box. Sign up for a box online at usps.com/poboxes.
****

All sales final on stamps and postage
Refunds for guaranteed services only
Thank you for your business

HELP US SERVE YOU BETTER

TELL US ABOUT YOUR RECENT

13

NORTH CHARLESTON
6401 RIVERS AVE
NORTH CHARLESTON
SC
29406-9996
4514870247
(800)275-8777 2:19 PM

10/10/2017

Product Description	Sale Qty	Final Price
PM Exp 1-Day Flat Rate Env (Domestic) (ALPHARETTA, GA 30022) (Flat Rate) (Signature Requested) (Scheduled Delivery Day) (Wednesday 10/11/2017 03:00 PM) (Money Back Guarantee) (USPS Tracking #) (EL466545843US)	1	$23.75
PM Exp Insurance (Up to $100.00 included)	1	$0.00
Total		$23.75
Cash		$40.00
Change		($16.25)

Includes up to $100 insurance

In a hurry? Self-service kiosks offer quick and easy check-out. Any Retail Associate can show you how.

****
BRIGHTEN SOMEONE'S MAILBOX. Greeting cards available for purchase at select Post Offices.
****

Save this receipt as evidence of insurance. For information on filing an insurance claim go to https://www.usps.com/help/claims.htm.

Order stamps at usps.com/shop or call 1-800-Stamp24. Go to usps.com/clicknship to print shipping labels with postage. For other information call 1-800-ASK-USPS.

****
Get your mail when and where you want it with a secure Post Office Box. Sign up for a box online at usps.com/poboxes.
****

All sales final on stamps and postage
Refunds for guaranteed services only
Thank you for your business

HELP US SERVE YOU BETTER

TELL US ABOUT YOUR RECENT POSTAL EXPERIENCE

Go to:
...experience.com/Pos

EL 466545843 US

UNITED STATES POSTAL SERVICE®

PRIORITY ★ MAIL ★ EXPRESS™

ORIGIN (POSTAL SERVICE USE ONLY)

1-Day	2-Day	Military	DPO
ZIP Code 29406	Scheduled Delivery Date (MM/DD/YY) 10/11/17	Postage $ 23.75	
Accepted (MM/DD/YY) 10/10/17	Scheduled Delivery Time ☐ 10:30 AM ☒ 3:00 PM ☐ 12 NOON	Insurance Fee $	COD Fee $
Accepted 2:18 ☐ AM ☐ PM	10:30 AM Delivery Fee $	Return Receipt Fee $	Live Animal Transportation Fee $
☐ Flat Rate	Sunday/Holiday Premium Fee $	Total Postage & Fees $ 23.75	
lbs. ozs.	Acceptance Employee Initials		

DELIVERY (POSTAL SERVICE USE ONLY)

Attempt (MM/DD/YY)	Time ☐ AM ☐ PM	Employee Signature
Attempt (MM/DD/YY)	Time ☐ AM ☐ PM	Employee Signature

PSN 7690-02-000-9996 2-CUSTOMER COPY

14

0068278 | 11-24
Office AU # | 1210(8)

CASHIER'S CHECK

SERIAL #: 6827801231
ACCOUNT#: 4861-009066

Remitter: ARELIS O SANTOS GOMEZ
Purchaser: ARELIS O SANTOS GOMEZ
Purchaser Account: 5090442558
Operator I.D.: u471814 u233168
Funding Source: Cash, Paper Items(s)

April 03, 2017

PAY TO THE ORDER OF ***HARRIS INVESTMENT HOLDINGS, LLC ***

Two thousand eight hundred fifty-two dollars and no cents **$2,852.00**

Payee Address:
Memo:

VOID IF OVER US $ 2,852.00

NON-NEGOTIABLE

WELLS FARGO BANK, N.A.
5561 RIVERS AVE
NORTH CHARLESTON, SC 29406
FOR INQUIRIES CALL (480) 394-3122

NOTICE TO PURCHASER–IF THIS INSTRUMENT IS LOST, STOLEN OR DESTROYED, YOU MAY REQUEST CANCELLATION AND REISSUANCE. AS A CONDITION TO CANCELLATION AND REISSUANCE, WELLS FARGO & COMPANY MAY IMPOSE A FEE AND REQUIRE AN INDEMNITY AGREEMENT AND BOND.

Purchaser Copy

3004 M4203 50069884

0068250 / Office AU # | 11-24 / 1210(8)

CASHIER'S CHECK

SERIAL #: 6825001854

ACCOUNT#: 4861-009066

Remitter: ARELIS O SANTOS GOMEZ
Purchaser: ARELIS O SANTOS GOMEZ
Purchaser Account: 5090442558
Operator I.D.: a522948
Funding Source: Cash

May 16, 2017

PAY TO THE ORDER OF ***HARRIS INVESTMENT HOLDING LLC***

Two thousand eight hundred fifty-two dollars and no cents **$2,852.00**

Payee Address:
Memo:

VOID IF OVER US $ 2,852.00

NON-NEGOTIABLE

WELLS FARGO BANK, N.A.
101 BERKELEY SQUARE LN
GOOSE CREEK, SC 29445
FOR INQUIRIES CALL (480) 394-3122

NOTICE TO PURCHASER–IF THIS INSTRUMENT IS LOST, STOLEN OR DESTROYED, YOU MAY REQUEST CANCELLATION AND REISSUANCE. AS A CONDITION TO CANCELLATION AND REISSUANCE, WELLS FARGO & COMPANY MAY IMPOSE A FEE AND REQUIRE AN INDEMNITY AGREEMENT AND BOND.

Purchaser Copy

FB004 M4203 60406729

0068250 / Office AU #

11-24 / 1210(8)

CASHIER'S CHECK

SERIAL #: 6825003671

ACCOUNT#: 4861-009058

Remitter: ARELIS O SANTOS GOMEZ
Purchaser: ARELIS O SANTOS GOMEZ
Purchaser Account: 5090442558
Operator I.D.: a522948
Funding Source: Paper Items(s)

PAY TO THE ORDER OF ***HARRIS INVESTMENT HOLDING LLC***

May 16, 2017

One thousand one hundred fourteen dollars and no cents

$1,114.00

Payee Address:
Memo:

VOID IF OVER US $ 1,114.00

NON-NEGOTIABLE

WELLS FARGO BANK, N.A.
101 BERKELEY SQUARE LN
GOOSE CREEK, SC 29445
FOR INQUIRIES CALL (480) 394-3122

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Purchaser Copy

FB004 M4203 60406729

7031

BELK, COBB, INFINGER & GOLDSTEIN, P.A.
ATTORNEYS
ESCROW ACCOUNT - IOLTA ACCOUNT
P.O. BOX 71121
NORTH CHARLESTON, SC 29415-1121

FIRST CITIZENS BANK
67-148-532

4/18/2017

PAY TO THE ORDER OF Merritt Abney, Atty for Harris Investment

$ **2,852.00

Two Thousand Eight Hundred Fifty-Two and 00/100********** DOLLARS

Merritt Abney, Atty for Harris Investment
151 Meeting Street
Liberty Center, Suite 600
Charleston, SC 29401

AUTHORIZED SIGNATURE

MEMO Aracelis Santos & Benjamin Reyna: February Rent

⑈0000703 1⑈ ⑆053201487⑆89100 0191901⑈

BELK, COBB, INFINGER & GOLDSTEIN, P.A. - ATTORNEYS

7031

Merritt Abney, Atty for Harris Investment		4/18/2017	
1010 · reimburseable expense-escrow	Aracelis Santos & Benjamin Reyna: February Rent		2,852.00

First Citizens Bank-Es	Aracelis Santos & Benjamin Reyna: February Re	2,852.00

Sec. 2-1. - Form of government adopted.

The council form of municipal government, with a city council composed of seven members, including the mayor, all of whom shall be elected at large for four year terms, as provided in S.C. Code 1976, §§ 5-11-10 through 5-10-40, is hereby adopted for the city.

(Code 1983, § 1-1-1)

State Law reference— Requirement for municipalities to select form of government, S.C. Code 1976, § 5-5-10.

Sec. 4-2. - Hours for public consumption of alcoholic beverages.

(a) Between the hours of 2:00 a.m. and 7:00 a.m. on Mondays through Sundays upon the premises of any private or nonprofit club, any store, beer parlor or any other place of business or commercial establishment authorized or licensed by law to sell wine, ale, porter, beer, malt liquors, or other alcoholic beverages it shall be unlawful for:

(1) An owner, employee or person in charge thereof to sell, offer for sale, give away, barter or exchange or in any manner dispense or permit the consumption of any wine, ale, porter, beer, malt liquor, or other alcoholic beverages; and

(2) Any person to drink or possess in an open container any wine, ale, porter, beer, malt liquor, or other alcoholic beverages.

(b) The provisions of subsection (a) of this section shall not prohibit during the aforesaid hours the sale or possession in sealed containers of beer, ale, porter, wine or other malt liquors for consumption off the premises.

(c) Commercial establishments which allow for the on-premises consumption of beer, ale, porter. wine, malt liquors, or other alcoholic beverages shall be prohibited from operating between the hours 2:00 a.m. and 7:00 a.m. on Mondays through Sundays.

(Code 1983, § 7-1-7; Ord. of 9-25-1978; Ord. No. 3-2016, 4-12-2016; Ord. No. 6-2016, 7-12-2016)

STATE OF SOUTH CAROLINA — COURT OF COMMON PLEAS

COUNTY OF BERKELEY — 2018-CP-08-00266

ARACELIS SANTOS,

Appellant,

-vs-

HARRIS INVESTMENT HOLDING,

Respondent.

TRANSCRIPT OF RECORD

March 14, 2018

Moncks Corner, South Carolina

B E F O R E:

The Honorable Roger M. Young, Sr., Judge.

A P P E A R A N C E S:

Thomas R. Goldstein, Esquire
Attorney for the Appellant

Merritt Gordon Abney, Esquire
Attorney for the Respondent

Amanda K. Haffenden, RPR, CRR
Circuit Court Reporter

then.

MR. GOLDSTEIN: I agree. He brought three or four grounds for ejectment. I prevailed on all but one. He then made an application to the Court for an award of attorney's fees for $54,340.38. Well, I took the position -- I took several positions, which will be argued in due course, not today, but I took several positions that that award was not justified and unlawful, one of which was I contested the jurisdiction of the Court to enter such an award because it's a money judgment.

After asking Judge Deaton to reconsider, Judge, we had a hearing on February 26th on the appeal bond which led to the order that Your Honor now holds in your hand, which is the actual order. The order requires the tenant, and this is consistent with what I've experienced in the past, to pay rent on time. If you don't pay rent, you're out, but also requires my client to post a bond of $59,295.23.

Well, naturally, posting such a bond is impossible. We called every bonding company that we could find. I called one. My client called four or five, and, of course, every bonding company said, predictably, Well, of course we'll write you a bond as soon as you post $59,295.23. Well, that condition might

says, 27-37-130, that an amount to be fixed by the magistrate condition for the payment of all costs and damages. Well, costs and damages are not attorney's fees. Attorney's fees -- Mr. Abney now has an unsatisfied money judgment against my client, and South Carolina governs the manner in which you can collect an unsatisfied judgment.

When the order came down awarding attorney's fees, it was for $35,887.23, so I'm not clear how Judge Deaton got from that award to the $59,000 that he awarded. I assume it was either one-and-a-half times the amount or it was the full amount of the request sought by Nelson Mullins in this case, I'm not sure, but this is going to be my last point, and then I'll set down and you can hear from Mr. Abney.

The purpose of the bond is to protect the landlord for performance under the lease, or, in this case, the order requiring her to pay rent. It's not to transform Nelson Mullins into a super creditor because what I told Judge Deaton is you've given the keys to the courthouse to Nelson Mullins. I'm not allowed to go forward and get judicial review unless I pay your judgment, or post a bond in the amount of your judgment, and that deprives my client of the right of access to the courts.

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Merritt Gordon Abney, Esquire
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Amanda K. Haffenden, RPR, CRR
Circuit Court Reporter

(March 14, 2018.)

THE COURT: You are here because you think Judge Deaton's bond requirements were, I gather, ultra vires and punitive and all kinds of other things.

MR. GOLDSTEIN: May it please the Court: I'm Tommy Goldstein for the Appellant Defendant in this case. Not quite ultra vires, but the contention is the bond prohibits access and denies my client access to the court.

Judge Deaton set an appeal bond under 27-37-130, which he is required to do, and over the years, I've handled dozens of these, and the appeal bonds have always run about the same way, which is if you don't pay the rent, you're out.

In this case, Mr. Abney submitted a request for -- well, you know what would streamline this, Your Honor? I actually prepared a timeline, if I may approach, Your Honor, and attached to it is the actual bond order. May I approach, Your Honor? That has the bond order that brings us here today.

We had a nonjury trial that I won some of the issues, Mr. Abney won one of the issues, but the issue he won was sufficient to obtain an order of ejectment, so after the trial, he then moved --

THE COURT: He won the most important one,

then.

MR. GOLDSTEIN: I agree. He brought three or four grounds for ejectment. I prevailed on all but one. He then made an application to the Court for an award of attorney's fees for $54,340.38. Well, I took the position -- I took several positions, which will be argued in due course, not today, but I took several positions that that award was not justified and unlawful, one of which was I contested the jurisdiction of the Court to enter such an award because it's a money judgment.

After asking Judge Deaton to reconsider, Judge, we had a hearing on February 26th on the appeal bond which led to the order that Your Honor now holds in your hand, which is the actual order. The order requires the tenant, and this is consistent with what I've experienced in the past, to pay rent on time. If you don't pay rent, you're out, but also requires my client to post a bond of $59,295.23.

Well, naturally, posting such a bond is impossible. We called every bonding company that we could find. I called one. My client called four or five, and, of course, every bonding company said, predictably, Well, of course we'll write you a bond as soon as you post $59,295.23. Well, that condition might

as well be fly to Neptune and bring back the teapot orbiting it because it's an impossible condition. My client has absolutely no ability to post that kind of money.

So I went back to Judge Deaton and tried to explain to him that a bond is a performance bond. An award of attorney's fees is a money judgment. There's no such thing as a bond for a money judgment, and, also, the limit for the jurisdiction of the magistrate's court to grant a money judgment is $7,500. He swept all that aside, so that brings us before Your Honor.

I had filed a second amended notice of appeal, appealing the order of ejectment, the order denying my motion for new trial, the order awarding attorney's fees, and now the order setting bond, and the grounds for my motion are as set forth in that motion, but, briefly, are: A, the Court didn't have jurisdiction to award a money judgment in excess of $7,500; two, that bond is not -- is to ensure performance, just like you talked about with the lawyers who were here ahead of us just a moment ago. In a colloquy with those lawyers, you said, What purpose would there be for a bond in this case?

A bond is to protect the landlord for damages and costs. That's what the statute says. The statute

says, 27-37-130, that an amount to be fixed by the magistrate condition for the payment of all costs and damages. Well, costs and damages are not attorney's fees. Attorney's fees -- Mr. Abney now has an unsatisfied money judgment against my client, and South Carolina governs the manner in which you can collect an unsatisfied judgment.

When the order came down awarding attorney's fees, it was for $35,887.23, so I'm not clear how Judge Deaton got from that award to the $59,000 that he awarded. I assume it was either one-and-a-half times the amount or it was the full amount of the request sought by Nelson Mullins in this case, I'm not sure, but this is going to be my last point, and then I'll set down and you can hear from Mr. Abney.

The purpose of the bond is to protect the landlord for performance under the lease, or, in this case, the order requiring her to pay rent. It's not to transform Nelson Mullins into a super creditor because what I told Judge Deaton is you've given the keys to the courthouse to Nelson Mullins. I'm not allowed to go forward and get judicial review unless I pay your judgment, or post a bond in the amount of your judgment, and that deprives my client of the right of access to the courts.

The only rule -- and I searched. Believe me, I searched. The only rule I can find that touches on this precise issue is Rule 7 of the Federal Rules of Appellate Procedure, and Rule 7 of the federal appellate rules procedure says bond for costs on appeal in a civil case. In a civil case, the district court may require an appellant to file a bond or provide other security in any form and amount necessary to ensure payment of costs on appeal, and that's Rule 7.

And, interestingly, Judge Deaton's order is slightly ambiguous because what he said in his order that I handed up to Your Honor, attached to the timeline, if you examine his order, it says bond, $59,295.23 due within five days of the date of this hearing. If not paid, then the appeal could be dismissed. Now, I'm not sure what he intended by that could be dismissed, but I submit, Your Honor, that an impossibility to conform to the condition is something that qualifies under that use. That modal auxiliary "could" is a lot different from the modal auxiliary "shall" and allows the Court to have some discretion.

So what I'm asking for in my motion, Your Honor, I'm asking for leave of court to be able to represent my client and get judicial review of the order.

THE COURT: What do you think is the proper

bond amount? It's usually the amount of rent that's due, and you got to pay it if you want to stay. So how much are we talking about?

MR. GOLDSTEIN: Well, the rent is $2,800 a month, $2,852 per month. Every case I've ever handled on this issue in my 36-year career the bond has been set as rent. They say, Goldstein, your client doesn't pay the rent, five days, done. Goodbye, and that's always been the bond.

Now, the purpose of the bond is to protect the landlord. Now, the landlord is not prejudiced by my client remaining in possession, paying rent; otherwise, the landlord has a vacant building, and this particular building I don't think is -- particularly high demand for this building, but that's neither here nor there. Doesn't belong to my client. It belongs to Mr. Abney's client, although we did offer to purchase it to solve this, but they're not interested in selling it.

So that was a long answer to a short question.

THE COURT: How many months do they owe rent?

MR. GOLDSTEIN: Rent is paid up through April 1. We understand if we don't pay the rent, we're done. We understand that.

THE COURT: So you're saying that's what the

bond should have been and you haven't done that?

MR. GOLDSTEIN: Exactly. So I'll sit down with that, because that's what I was trying to say.

THE COURT: All right.

MR. ABNEY: Your Honor, I'm Merritt Abney for the landlord. So the basis -- unlike the typical case where the bond may be set at the amount of the rent, this is not an eviction where the basis of the eviction was nonpayment of the rent. The basis of Judge Deaton's -- and it's spelled out in the most detailed 30-page magistrate order that I've ever seen.

Judge Deaton found that this tenant repeatedly breached the lease by violations of local ordinance and state law and created a public nuisance on the property that created exposure to the landlord beyond what the landlord agreed to as part of the benefit of this bargain. So a big portion of setting that bond amount to protect the landlord for this public -- what has already been described by a sitting judge as a public nuisance, to protect a landlord from the potential damage to having a public nuisance that it owns and potentially someone getting hurt out there during the two or three years this thing goes up on appeal, Judge, we had asked for a bond way in excess of $60,000 given that exposure that we now face. Judge Deaton settled on $60,000 as

taking that exposure into account, the amount of the unpaid rent at the time, and the fact there is a judgment, money judgment, for $35,000 on attorney's fees.

This was just not a typical you-didn't-pay-the-rent eviction. We were in court five or six times before we had a full-day trial at which there were, like, eight or ten witnesses who testified, and Judge Deaton ultimately concluded that they had established a public nuisance on the property due to repeated violations of after-hour consumptions laws. There were weapons violations at this property. It's a nightclub that essentially has exhausted the resources of the Hanahan Police Department because they're out there every night.

So that was the basis for the eviction and the basis for the bond that was set after two hearings, so Judge Deaton, who sat there and heard the evidence, realized the danger that this tenant poses, set the bond on that basis. So under 27-37-130, in eviction cases, you got to post a bond to appeal. By statute you must post the bond, and if you don't post the bond within five days of the notice of appeal has been filed, the appeal shall be dismissed, so that is the basis for --

THE COURT: Here is the critical issue: The amount of attorney's fees being an award that is also

part of the bond amount is troublesome, to me. I was once interviewed for a law thing, and they said, What do you think would be the one thing that we could do to improve the administration of justice in this state?

I said, That's easy. Take away the right to appeal my rulings. This is an appealable order. Judge Deaton ruled, and he gets his orders reviewed just like I get my orders reviewed, so we got to deal with the amount of the bond. It seems to me that Mr. Goldstein's argument about the portion of any bond that requires payment of your side's attorney's fees would, in fact, be improper because that's a money judgment that's out there, and we don't typically set that as part of a bond.

So whatever comprised that $59,000, that may or may not be proper, but I don't see where it got broken down as to how you came up with that number. My inclination is to send it back to him and say set a bond that does not include the amount of the attorney's fees that you have awarded.

MR. ABNEY: But the fee portion of that judgment would be no different than a judgment for back rent.

THE COURT: Yes, it would be.

MR. ABNEY: But it is also a money judgment, and under the statute -- I mean, just like a back rent

award would be a money judgment --

THE COURT: There's a difference between back owed rent and a regular money judgment. There just is, at least the way I understand it. You know, if he would have been, oh, any other kind of contract dispute that would have ended up as a dollar amount of an award for your client, we wouldn't be here because there wouldn't be a necessity to post a bond or appeal a money judgment.

All right? So you may or may not have been entitled -- your side may or may not have been entitled to attorney's fees, and, if you were, maybe that was a reasonable amount, maybe it wasn't, but that portion is a money judgment. The amount of rent that is owed for -- well, the amount of rent that is owed it's in dispute. The legislature has said, basically, if you want to stay in a property during the appeal, you at least got to pay the rent.

Now, there may be some circumstances where he gets to say, well, rent plus something else, but I don't know what that something else is, but on the surface, to me, it appears that any amount in excess of the amount of rent might be improper. My inclination, having read these things, is to send it back and say set a new bond. Do not include the amount of the attorney's fees award, and tell me what else over and above rent owed that you

think should be part of your bond, and then let him report back as to what it is, but I don't know what it is.

I don't know how he came up with that number of $59,000 because it doesn't sound like it matches up with the attorney's fees, but to the extent it includes the attorney's fees, I think that's an improper amount to put down as an appeal bond. Okay?

So I'm going to send it back to Judge Deaton and say set a new appeal bond that does not include the award of attorney's fees, and then if it's rent only, well, then you've met it, but if it's rent plus something else, he needs to tell me what the something else is, because it may or may not be a proper money judgment. But Judge Deaton is a pretty good magistrate, so he very well may have something in there, but I don't know how he came up with that amount other than attorney's fees that he's awarded to your client as the prevailing party, and I think that is a money judgment that does not have to be bonded off on appeal.

MR. ABNEY: But, I mean, Your Honor, would he not have to -- this is a bond to stay, and in a normal appeal of a money judgment, in order to stay enforcement of that judgment, he would have to post a supersedeas bond, and the amount he would have to post would be more

than the amount of the judgment.

THE COURT: If we have, say, a wreck case, all right, or a breach of contract case, one side wins, one side loses. If the side that loses gets ordered to pay money and they want to appeal, they don't have to post a bond in the amount that they lost, okay?

MR. ABNEY: Correct.

THE COURT: So that's a money judgment. If -- that's the difference between that kind of case and a landlord-tenant dispute, and in a landlord-tenant dispute, we're talking about possession of property, and the legislature said, and I think it makes good sense, that if on appeal if you want to appeal that decision, you at least got to pay the rent to be able to stay in there.

If it was just a money judgment over something else, say there was a slip-and-fall between the landlord and the tenant -- that's probably not a good example, but if there was any other kind of dispute that didn't involve the payment of rent, then it would probably be something that does not have to be bonded off on appeal, but the use and possession of property is a special thing because otherwise it could get tied up on appeal for two years, three years, and the landlord is stuck with somebody who's getting free rent during the

appeal, so you don't get free rent on appeal.

That's why you got to pay a bond, quote, end quote, a bond in the amount of the rent, and you got to make up whatever you owe in back rent and you got to continue to pay while you're on appeal. That's the difference, at least as my brain understands it.

MR. ABNEY: But as I understand this situation, the effect of this order will be to stay the money judgment, stay enforcement of the attorney's fees.

THE COURT: Correct.

MR. ABNEY: And he's having to post no bond to do that.

THE COURT: No, he has to pay any past due rent, and he has to pay rent to keep current to stay. That is the bond.

Now, Mr. Goldstein represents that he doesn't owe any back rent and he's, in fact, paid up through April 1st, so he's posted the bond that would normally be in a typical landlord-tenant dispute, and the amount of attorney's fees is not something that the landlord would normally be awarded in a landlord-tenant dispute that requires payment in order to stay, because if he gets -- suppose his client prevails. Then they got to get $50,000 out of your law firm that you've had the use of for several years? I don't think that's -- that doesn't

sound right.

So that's just the way I see it, so I'm going to send it back and tell them you got to just come up with a new bond that does not include the attorney's fees and to break it down as to whatever it is. To the extent that it's something other than past due rent and current rent, then he needs to tell me what it is, because it sounds to me like there's some dollar amount in there between rent and attorney's fees.

I don't know what it is, and it doesn't sound like y'all know what it is, but it might just be he was figuring out back rent plus current rent and that's how he came up with the number that I don't know, but, personally, I just think he made a mistake by ordering the bond to include the award of attorney's fees. Any other thing I'm not saying was or was not correct, I just don't know what he came up with, other than the attorney's fees, which seems to be a large portion of it.

Okay?

MR. ABNEY: Okay.

THE COURT: All right.

- - -

(Whereupon, the proceedings were concluded.)

- - -

I, the undersigned, Amanda Kelly Haffenden, RPR, CRR, Circuit Court Reporter for the Ninth Judicial Circuit of the State of South Carolina, do hereby certify that the foregoing is a true, accurate, and complete transcript of record of all the proceedings had and evidence introduced in the trial of the captioned case, relative to appeal, in the Circuit Court for Berkeley County, South Carolina, on the 14th of March 2018.

I do further certify that I am neither of kin, counsel, nor interest to any party hereto.

November 15, 2019

Amanda Haffenden

Circuit Court Reporter

STATE OF SOUTH CAROLINA	)	THE COURT OF COMMON PLEAS
	)	
COUNTY OF BERKELEY	)	DOCKET NO. 2018-CP-08-0266
	)	
	)	
	)	
ARACELIS SANTOS	)	
	)	
Plaintiff	)	
	)	
vs.	)	
	)	
HARRIS INVESTMENT HOLDINGS, LLC	)	
	)	
	)	
Defendant	)	
	)	
	)	
	)	
_____	)	TRANSCRIPT OF RECORD

April 10, 2018
Moncks Corner, S. Carolina

B E F O R E:

THE HONORABLE J. C. NICHOLSON, JUDGE

A P P E A R A N C E S:

THOMAS R. GOLDSTEIN, ESQ.
Attorney for the Plaintiff

MERRITT GORDON ABNEY, ESQ.
Attorney for the Defendant

JOYCE C. RUEGER, CVR-M
Circuit Court Reporter

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No exhibits were introduced

PROCEEDINGS

THE COURT: What y'all got?

MR. ABNEY: We've got an appeal from a Magistrate's Eviction Trial.

THE COURT: Who is the appellate?

MR. ABNEY: Mr. Goldstein.

THE COURT: Mr. Goldstein?

MR. GOLDSTEIN: Judge, honestly you're going to think I'm being facetious but I'm not. I don't know why we're here; I really don't.

THE COURT: You don't know why you're here?

MR. GOLDSTEIN: I don't know why we're here.

THE COURT: Well, I'm glad you showed up today. I'm glad to have your acquaintance or your company.

MR. GOLDSTEIN: Thank you, Judge. By the way, I'm Tommy Goldstein for the appellate, Aracelis Santos. This case there was a notice of appeal, then an amended notice of appeal, then a second notice of appeal. And I think the final notice of appeal went in on March 12th.

THE COURT: Do I need to remember that date?

MR. GOLDSTEIN: No, not really. I have a timeline here if you want it.

THE COURT: No, just tell me about it.

MR. GOLDSTEIN: It's not that complicated.

THE COURT: Is that '18 or '17?

MR. GOLDSTEIN: '18.

THE COURT: '18; okay.

MR. GOLDSTEIN: Mr. Abney then moved to dismiss and I moved for a stay. Those two matters came before Judge Young and I forget what date but it was approximately two weeks ago. Judge Young has not -- both parties submitted proposed orders to Judge Young. Judge Young has not entered an order yet.

THE COURT: Well, what y'all doing here?

MR. GOLDSTEIN: Well, okay that's all I want to say. That's why I don't know why we're here.

THE COURT: I mean if he's already heard it.

MR. GOLDSTEIN: No, he didn't hear the appeal. He heard the Motion to Dismiss and my Motion for Stay.

THE COURT: What are you trying to stay?

MR. GOLDSTEIN: He says that I should not be allowed to appeal because I didn't post a bond.

THE COURT: Oh.

MR. GOLDSTEIN: And Judge Young hasn't entered a written order yet.

THE COURT: And you filed a Motion to Stay and you filed a Motion to what?

MR. GOLDSTEIN: Mine was a Motion to Stay.

THE COURT: Okay.

MR. GOLDSTEIN: His was a Motion to Dismiss.

THE COURT: And y'all heard that. How are you going to hear the appeal until he rules?

MR. ABNEY: He didn't hear the Motion to Dismiss, Your Honor. All he did was hear the Motion to Stay. Mr. Goldstein was trying to stop the eviction warrant from reissuing because he didn't post a bond.

THE COURT: Oh, I got you.

MR. ABNEY: And Judge Young said fine. I don't like the way Judge Deaton set the bond so we're going to reset the bond and figure that out. He didn't address any of the arguments on the Motion to Dismiss.

THE COURT: But do y'all want to hear this today or not? It doesn't matter to me; I don't care ---

MR. ABNEY: --- oh, absolutely. This is all about delay, Your Honor. He's trying to drag this thing out so his client can stay in while the Magistrate has ordered an eviction ---

THE COURT: --- Mr. Abney, he's just representing his client.

MR. ABNEY: I hear that.

THE COURT: Okay.

MR. ABNEY: But my client has an interest -- Your Honor, here's the basis ---

THE COURT: --- and you're representing your client.

MR. ABNEY: But the basis for the eviction, Your Honor was that this place -- it's a nightclub in Hanahan. And Judge Deaton ruled that it is operating ---

THE COURT: --- is it a strip joint?

MR. ABNEY: Not a strip joint ---

MR. GOLDSTEIN: --- I wish ---

THE COURT: --- I can't believe it's not a strip joint.

MR. ABNEY: It's a late night after hours consumption drinking joint.

THE COURT: Late hours after consumption.

MR. ABNEY: That's right.

THE COURT: And there's no women dressed in skimpy clothes dancing around?

MR. ABNEY: Not as far as I know, no.

THE COURT: How did Goldstein get involved in it?

MR. ABNEY: Just lucky I guess. But Your Honor, Judge Deaton found that this place is operating as a public nuisance. They are persistently violating the law. And he ordered eviction based on persistent violation of law and the fact that this place is they are allowing them to drink afterhours, violating fire code.

There have been weapons violations out there. Chief of Police in Hanahan came and testified that these people need to go. And so what Mr. Goldstein is doing is

dragging this thing out so his client can stay there while this thing is up on appeal.

THE COURT: Well, he's got to make enough money to pay his fees?

MR. ABNEY: I know. I agree with all of that. But my client has an interest in getting these people out because right now they own a nightclub where their tenant has a court order saying they are operating a public nuisance. And my client faces that exposure of owning a property that has been declared by court order a public nuisance and it's continuing to operate.

THE COURT: Well, why do they care?

MR. ABNEY: My client?

THE COURT: Yeah?

MR. ABNEY: If somebody gets killed out there you know who is going to get sued.

THE COURT: You?

MR. ABNEY: His client is going to be judgment proof and my client is the one who is going to be sued.

THE COURT: Okay. So you want them out, huh?

MR. ABNEY: We want them out. And this is an appeal. The problem we got, Your Honor is the appeal that was filed says I appeal and attaches an order. It doesn't say one ground of what we're appealing this about. And the rules very clearly say that in the notice

of appeal you have to state the grounds for the appeal. And the Supreme Court has said if you don't do that where the rules require it you haven't filed a notice of appeal.

THE COURT: That's what the Supreme Court appeal said -- the Supreme Court rules say, right?

MR. ABNEY: Pringle v Builders Transport, 298 S.C. 494 (1989). The Supreme Court said if you don't state the grounds for the appeal in the notice it is as if you did not file one ---

THE COURT: --- you're talking about that's the appellate rules, right; the Supreme Court appellate rules?

MR. ABNEY: This is actually in the Magistrate Court rules and the appellate rules; both of them say that.

THE COURT: Okay. Are we going to hear it today or y'all going to wait on Judge Young? It doesn't matter to me.

MR. ABNEY: Judge Young is not -- he's not -- like I said all he heard is the bond inappropriate. The bond that Judge Deaton set was 60,000 dollars.

THE COURT: Okay.

MR. ABNEY: And Judge Young said I think a portion of that was the fees, the attorney's fees that Judge

Deaton ordered my client after trial. He didn't think that was right that those were included in the amount of the bond. He was never -- the merits of the appeal were never before him and he hasn't heard that; nobody argued it. And nobody ordered the Motion to Dismiss in front of him. All he heard was I don't like that; I'm going to send the bond ---

THE COURT: --- so obviously you want to hear it ---

MR. ABNEY: --- you bet ---

THE COURT: --- and Mr. Goldstein you want to put it off?

MR. GOLDSTEIN: Correct. We now have the same case pending before two judges and...

THE COURT: Well, you don't have the same case. You've got the issue of the bond, of whether the bond is going to be reduced or not.

MR. GOLDSTEIN: Right. And then so then depending on what he ---

THE COURT: --- the only thing the bond is going to do is allow you to appeal?

MR. GOLDSTEIN: Correct, that's right.

THE COURT: So you don't really have two issues before two different judges; not the same issues.

MR. GOLDSTEIN: Well, there is some overlap, there is some overlap.

THE COURT: Like I said it doesn't matter to me.

MR. GOLDSTEIN: I'm happy for Your Honor to ---

THE COURT: --- I just as soon head home.

MR. GOLDSTEIN: Well, I would too. I'm happy for Your Honor to hear the appeal. I'm not prepared to go forward today. This was a half -- let me give you the true story now. I'll give you the correct story.

THE COURT: All right.

MR. GOLDSTEIN: If I may approach? I'll hand it to your bailiff.

[Whereupon, Mr. Goldstein proffers documents to the Court]

MR. GOLDSTEIN: This is a list of all of the tickets, citations issued to my client revised of as of December. [To Mr. Abney] I gave you one last time.

MR. ABNEY: I haven't seen this. But in any event Your Honor, this is an appeal. We don't consider new evidence on an appeal.

MR. GOLDSTEIN: It's not new evidence. This is a summary of evidence that is already in the record. But if -- the Magistrate's return got filed March 22nd which I didn't know that because they didn't send one to me but I found it online. It has five C.D disks, five. What happened in this case ---

THE COURT: --- the return has five disks?

MR. GOLDSTEIN: There are five C.D. disks. So I'm happy for Your Honor to hear the appeal but I want the right ---

THE COURT: --- well, let me see what the return shows. Hang on a second.

[Whereupon, the Court reviews documents]

THE COURT: All right. He's got a return in here and he's got five disks attached to it.

MR. GOLDSTEIN: That's correct.

THE COURT: I assume the disks are the testimony?

MR. GOLDSTEIN: Correct.

THE COURT: What's your grounds for appeal?

MR. GOLDSTEIN: My grounds for appeal are there is in ---

THE COURT: --- apparently he's got all the exhibits and everything attached to the return ---

MR. GOLDSTEIN: --- exactly. I ---

THE COURT: --- let me take a look at his return very briefly, okay?

MR. GOLDSTEIN: Sure.

MR. ABNEY: I have a copy of his trial order too Judge if it's not ---

THE COURT: --- let me just look at the return for just a second, okay? Most of it is about the exhibits, copies of the relevant documents. How long did the trial

last?

THE COURT: It was a full day with about eight witnesses. We did it in one day, it was non-jury, all heard by Judge Deaton and he issued a 26 page written order following the trial with his findings of fact and conclusions of law.

[Whereupon, the Court reviews documents]

THE COURT: I mean really the return is just a synopsis of what is on these -- what -- copies of relevant documents. It doesn't really say what he ruled and why he ruled it.

MR. ABNEY: I have the written order, Your Honor.

THE COURT: I'm sure it's in here somewhere.

MR. GOLDSTEIN: It's attached to the notice of appeal.

[Whereupon, Mr. Goldstein proffers documents to the Court]

MR. GOLDSTEIN: I gave you the out of date one.

MR. ABNEY: Judge, would you like the order?

THE COURT: I got it. It's in the file.

MR. ABNEY: You got it, okay; December 7th?

THE COURT: That's the wrong one? Give that one back to him, please.

[Whereupon, the Court returns documents to Mr. Goldstein]

THE COURT: Okay. Just give me a chance to review the order, okay.

[Whereupon, the Court reviews documents]

THE COURT: Do y'all have copies of the disks?

MR. GOLDSTEIN: I was going to stop and pick up my copies on the way back to my office today.

THE COURT: Do y'all plan on transcribing that?

MR. GOLDSTEIN: Yes. I plan on transcribing the testimony.

THE COURT: I mean looking at the order ---

MR. ABNEY: --- I believe the trial testimony has already been transcribed ---

THE COURT: --- I mean looking at the exhibits second amended notice of appeal. I didn't look at that. What's your grounds for appeal?

MR. GOLDSTEIN: The grounds for appeal are that the evidence doesn't sustain a finding of nuisance.

THE COURT: This is a civil action, right?

MR. GOLDSTEIN: Correct.

THE COURT: I think civil actions on appeal from Magistrate's Court to Circuit Court are de novo; criminal are not. But that's neither here or there. My problem to be perfectly honest with you looking at this I don't know how you're going to ever make a decision without a transcription.

MR. ABNEY: I believe we have -- I think the trial has already been -- we already have a transcript of that with was consent ---

THE COURT: --- you do?

MR. ABNEY: The problem is, Your Honor ---

THE COURT: --- where is the transcript?

MR. ABNEY: I believe we have one.

MR. GOLDSTEIN: I sure would like to get a copy.

MR. ABNEY: I may be misremembering that. But it's on the -- the testimony is -- you know it's recorded so it's on that disk.

THE COURT: I know. Has it been transcribed?

MR. ABNEY: I thought it had but maybe it hasn't ---

THE COURT: --- I'm not going to sit here and listen to five disks, okay.

MR. ABNEY: Right.

THE COURT: Has it been transcribed? I don't think it has reading his return and reading the order. All this says is the attachments that were entered into evidence. And all he does in his return is list those. He doesn't say why and what transpired and what factually occurred in the return ---

MR. ABNEY: --- I understand ---

THE COURT: --- normally the only thing I have to

look at on appeal is a return and they will lay out the facts for why they did what they did.

MR. ABNEY: Right.

THE COURT: So with this the way the return is done I don't know how you're going to -- how anybody can make a decision without at least having access to the transcripts.

MR. ABNEY: Fair enough. I agree.

THE COURT: Can y'all -- somebody transcribe it?

MR. GOLDSTEIN: Your Honor?

THE COURT: Can y'all agree on getting somebody to transcribe it and pay them and produce it and set the hearing?

MR. GOLDSTEIN: We intend to transcribe it. My client is cash poor and so we're having -- we -- literally -- I didn't realize there were disks that had been filed with the Court. I have a disk that the Court provided me that is just one disk.

And we have been in our office we've been listening to the disk and typing and it's just not working out; it's not going to work. So frankly my client has been saving up money so we can hire a court reporter to do it.

THE COURT: Can y'all hire a court reporter and split the cost to transcribe these?

MR. ABNEY: Sure. I think -- it's his appeal so I

think it's his burden to pay ---

MR. GOLDSTEIN: --- it is ---

MR. GORDON: --- for the transcript. And so I think he should have to bear that burden.

THE COURT: Well, if you lose it you're liable to wind up -- if you lose it you're liable to wind up paying for it also.

MR. ABNEY: I'm feeling pretty confident about this one, Judge.

THE COURT: I understand. I'm just pointing out that if you do lose it you might wind up paying for it in the long run.

MR. ABNEY: I understand. I understand.

THE COURT: So you won't split the cost of the transcript and call it an official transcript?

MR. ABNEY: Your Honor, I'd have to check with my client to find out whether they are willing to split the cost. I can't just give that ---

THE COURT: --- the only thing I'm saying is so we'll have something official that is the transcript and y'all can both agree on who is going to transcribe it.

MR. ABNEY: I agree.

THE COURT: That's all I'm saying.

MR. ABNEY: I do think we need that.

THE COURT: And I agree with you it probably is his

burden but if his secretary does it you're going to object that it's not an official transcript; that's my problem.

MR. ABNEY: Okay. All right. Well, as long as his client commits to split the cost I'm fairly confident I can persuade my client to do that as well.

THE COURT: And pick a reputable court reporter that will transcribe it; not your secretaries. Not that they couldn't do a good job.

MR. GOLDSTEIN: And to be fair in splitting the cost the normal process is I pay for an original and he pays for a copy so the respondent doesn't get out free.

MR. ABNEY: Fair enough. Fair enough.

THE COURT: Is that the way y'all want to do it?

MR. GOLDSTEIN: I think that's fair.

THE COURT: You pay the original and you pay for your copy?

MR. ABNEY: That's fine.

THE COURT: Okay. Get this transcribed and then once you get it transcribed submit it to the Clerk and y'all can set a hearing. It's going to take awhile to go through this hearing.

MR. ABNEY: No doubt, no doubt.

THE COURT: I'm not going to do it this afternoon at 3 o'clock.

MR. ABNEY: Your Honor here's the deal, until just now I didn't even what the basis for the appeal was.

MR. GOLDSTEIN: I'll amend it ---

MR. ABNEY: --- well, you can't ---

MR. GOLDSTEIN: --- that's fair ---

MR. ABNEY: --- under this case law you cannot do that. It is -- he has not filed an appeal at this point.

THE COURT: Well, I'll give him an opportunity to amend his grounds. Mr. Goldstein amend your grounds so he will know what your grounds are.

MR. GOLDSTEIN: Yes, sir.

THE COURT: Be very specific; not just some B.S. okay?

MR. GOLDSTEIN: I understand.

THE COURT: You understand?

MR. GOLDSTEIN: Yes, sir.

THE COURT: All right.

MR. ABNEY: [To Mr. Goldstein] And when can you do that?

MR. GOLDSTEIN: Judge, I don't mind you setting a briefing schedule say -- oh, when can I amend? I'll amend by close of business on Friday.

THE COURT: Okay.

MR. ABNEY: Well, I would like to preserve the argument that it's still untimely and the Court has no

jurisdiction to hear the appeal. If we want to hear that today we can but if you want to wait until he has filed the amendment I can do that as well because the case law is squarely on point that if you don't set out the grounds within the first 30 days you're out of court. I have a copy of the decision here, Your Honor if you want to take a look.

THE COURT: Where are the Magistrate Court rules?

MR. ABNEY: I have a copy of those as well.

THE COURT: What do the Magistrate Court rules say about the appeal?

MR. ABNEY: 18. It's Rule 18. It says, Your Honor ---

THE COURT: --- Magistrate Rule 18? What does the Magistrate Court -- I don't have a copy of the Magistrate Court rules.

MR. ABNEY: Within 30 days after delivery of written notice of a judgment to the parties and their attorneys a party wishing to appeal shall serve on the respondent and file a notice of appeal containing a statement of the grounds for the appeal with a Magistrate rendering a judgment and with the Circuit Court in the county where the judgment was rendered.

And what this decision in Pringle v Builders Transport says ---

THE COURT: --- I suspect that case was under the Supreme Court appellate rules.

MR. ABNEY: But the point was ---

THE COURT: --- I understand your point. But when you're dealing with Magistrate's Court you're dealing with some people that don't have lawyers and you can't believe some of the notice of appeals that I see, okay.

Most of them are trying to rehash the facts so it's a little more liberal standard when you get to that level is my point to you, okay. And I'm distinguishing your case that way. I'm sure that case was appellate court rules and when you go down to Columbia as you well know you've got to have all the T's crossed and the dots on the I's.

MR. ABNEY: It was actually from a worker's comp case ---

THE COURT: --- okay ---

MR. ABNEY: --- and it was dealing with a ---

THE COURT: --- I understand ---

MR. ABNEY: --- workers comp statute that said the same thing ---

THE COURT: --- but it was still operating under the South Carolina Appellate Court rules not the Magistrate Court rules is my point.

MR. GOLDSTEIN: And also Your Honor I believe when

Judge Young does enter an order I believe he is remanding the case back to the Magistrate Court so there will have to be another notice of intent to appeal following the remand here.

MR. ABNEY: No. He's just sending it back to deal with the bond issue, the amount of the bond and that is it.

THE COURT: [Reading] Containing the statement and grounds for the appeal rendering the judgment in the Circuit Court where the judgment was rendered.

[Whereupon, the witness reviews document]

THE COURT: All right. What I'm going to do is let's see what Judge Young does with his order, okay. If it is -- at some point in time hold off on any transcription until we see what Judge Young is going to do with his order.

If he does remand it back to Magistrate Court to reset the amount or whatever he does; I don't know what he's going to do. But if he does remand it back then I guess this appeal would be moot and it would be a new appeal, okay. I don't know what he's going to do okay.

MR. ABNEY: I don't think that's correct, Your Honor.

THE COURT: I don't know what he's going to do. I've remanded things back to Magistrates with specific

instructions to tell me why you did this, this, and this. And I don't know what he's going to do; he may do that, okay.

MR. ABNEY: But he hasn't touched the merits of the appeal, Your Honor.

THE COURT: I understand. But if he remands it back to the Magistrate to set the bond proper then it's a new ballgame. Circuit Court loses jurisdiction on the remand if you follow what I'm trying to say to you Mr. Abney. He may not do that; I don't know what he's going to do.

But I'm just going to continue it until he rules, okay. That's the only thing I know to do. There are too many issues hanging out there. Let's see what he does. If he amends the bond himself then you've still got your argument.

MR. ABNEY: Okay. So you're not denying the Motion to Dismiss?

THE COURT: No, I'm not going to deny it. I'm going to continue it to see what he does because I think that's important at this point in time. If he remands it its one animal and if he doesn't it's a different animal. I mean when you remand it back to the court it was appealed from number one the aggrieved party can't appeal my remand and number two I lose jurisdiction to the lower

court. And it's a whole new ballgame. Again, now if he doesn't remand it then you're still alive. That's my point.

MR. ABNEY: I see that, Your Honor. It's just that the only thing he would be remanding ---

THE COURT: --- and I don't know what he's going to do.

MR. ABNEY: Okay.

THE COURT: But he can't remand just that one issue. He remands the case back to the Magistrate otherwise the Magistrate won't have jurisdiction to do anything. Or he may just do it himself.

Like I say from reading some of the appellate court rules a lot of lawyers don't address this but the civil side Circuit Court sort of got a de novo. You can adjust the facts as you deem appropriate in civil cases. You can't in criminal. So I don't know. What's y'alls position on that?

MR. GOLDSTEIN: That's where I started off when I said I'm not sure. I wasn't being facetious I don't know why we're here. I think Judge Young has it ---

THE COURT: --- I mean what's your position on the de novo issue in Circuit Court ---

MR. GOLDSTEIN: --- oh no, I get -- its an appeal from a non-jury -- if it was a jury trial I think I would

be stuck but an appeal from a non-jury trial I think it's a de novo review. I think that's a standard review.

THE COURT: Mr. Abney, what's your opinion?

MR. ABNEY: I don't think that the Circuit Court can reverse a finding of fact whether it's jury or non-jury if there is any evidence to support the decision.

THE COURT: I agree with that legally.

MR. ABNEY: Yes, and like I said I don't know what the grounds for the appeal is other than ---

THE COURT: --- I understand ---

MR. ABNEY: --- what I've heard here in the past 15 minutes because it was never stated. So I think any finding of fact that is supported by any evidence in the record is going to be binding.

THE COURT: That's not a de novo hearing ---

MR. ABNEY: --- I understand ---

THE COURT: --- what you said and Circuit Court has de novo authority on civil appeals from Magistrate's Court. If you dig into the case law way back a while back and they haven't changed it recently.

MR. ABNEY: Well, even if that's the case I mean I do think -- Judge Deaton was of course the Judge that was there and heard the evidence ---

THE COURT: --- I understand ---

MR. ABNEY: --- and judged the creditability of the

witnesses ---

THE COURT: --- I'm not saying that the Circuit Court needs to do that. I'm just saying they do have the authority to do it; that's all I'm saying. And I'm not saying it would be done in this case.

MR. ABNEY: Okay.

THE COURT: And then I think it's up to the Court's discretion whether he takes any new evidence on de novo. I normally have never done that because I don't think it's appropriate. You got to rule on what you see in front of you.

MR. ABNEY: In the record.

THE COURT: Without taking any additional testimony.

MR. ABNEY: I agree with that.

THE COURT: I'll continue everything and see what Judge Young does.

MR. GOLDSTEIN: Thank you, Your Honor. He obviously doesn't like my order or his order.

MR. ABNEY: I mean they weren't substantially different.

THE COURT: Did y'all send him proposed order?

MR. ABNEY: We sent proposed orders and all they do is ---

THE COURT: --- did y'all remand it in your

proposed orders?

MR. GOLDSTEIN: They both called for a remand.

MR. ABNEY: Of the bond, to set the bond ---

THE COURT: --- they both called for a remand ---

MR. ABNEY: --- to reset the bond and that's it.

THE COURT: See my theory is you can't remand just the bond issue. You've got to remand the whole case.

MR. GOLDSTEIN: Otherwise there is no jurisdiction.

THE COURT: Otherwise no jurisdiction in Magistrate's Court.

MR. GOLDSTEIN: Can't be a little bit pregnant.

THE COURT: It sounds interesting. It sounds like y'all got a good dog fight going on.

MR. ABNEY: It's frustrating, Judge because now we've got this situation where we've got a public nuisance that has been declared such by the Court and there's nothing my client can do about it. The City of Hanahan has revoked their license already and they are still operating. And we ---

THE COURT: --- what do they have a license to do?

MR. GOLDSTEIN: It's a ---

MR. ABNEY: --- a business license. They stripped their business license for the same conduct for which Judge Deaton ejected them. And we can't -- our hands are tied because of the appellate machinations.

THE COURT: Can the City automatically -- can they just automatically revoke the license?

MR. ABNEY: They did after a hearing. They held a hearing and following the hearing revoked the license. Of course ---

THE COURT: --- the City had a hearing?

MR. ABNEY: Yes. The City held a hearing and revoked the license after an evidentiary hearing. They appealed that. And that's up in the Court of Appeals now ---

MR. GOLDSTEIN: --- Court of Appeals.

MR. ABNEY: And throughout all of this they just continue to operate and there is nothing we can do. And that was the whole point of getting the bond ---

THE COURT: --- we don't need all this on the record, okay.

********END OF TRANSCRIPT OF RECORD********

C E R T I F I C A T E

I, the undersigned, Joyce C. Rueger, Official Circuit Court Reporter for the Ninth Judicial Circuit of the State of South Carolina, do hereby certify that the foregoing is a true, accurate, and complete Transcript of Record of the proceedings had and evidence introduced in the trial of the captioned case, relative to appeal, in the Court of Common Pleas for Berkeley County, South Carolina on the 10th day of April, 2018.

I do further certify that I am neither of kin, counsel, nor interest to any party hereto.

August 24, 2019

_____

Joyce C. Rueger, CVR-M
Court Reporter

STATE OF SOUTH CAROLINA COUNTY OF CHARLESTON	Court of Common Pleas Case No. 2018-CP-08-0266 and 2018-CP-08-01008
ARACELIS SANTOS, Plaintiff, VS. HARRIS INVESTMENT HOLDING, LLC, Defendant.	Transcript of Record DATE: August 6, 2018

B E F O R E:

THE HONORABLE PERRY M. BUCKNER, III

A P P E A R A N C E:

THOMAS R. Goldstein
Attorney for the Plaintiff

MERRITT GORDON ABNEY
Attorney for the Defendant

ORIGINAL TRANSCRIPT ORDERED BY:
Belk Cobb Infinger & Goldstein, P.A.

Karen V. Andersen, RMR, CRR
Circuit Court Reporter

MR. ABNEY: This is a memorandum in support of the motion to dismiss for the second appeal. And if I may, Your Honor, just --

THE COURT: Where is the motion itself?

MR. ABNEY: Here's a copy of the actual motion.

THE COURT: All right. I've read the motion that's on the roster. And I've actually, because they are intertwined, as you pointed out, it appears to me that we are talking about two actions for ejectment. And one was as to Latino Mix and one as to El Alamo. And one of these matters is moot, is it not?

MR. ABNEY: That's correct. The Latino Mix matter is moot.

THE COURT: So only issue is, last thing I read was Judge Young's order, which remanded the matter back to the magistrate concerning the bond for the purposes of appeal. Now, what I understand was set as an add-on today, which I wasn't aware of, was a motion filed on July the 11th, which is Harris Investment Holdings's motion to dismiss. Is that correct?

MR. ABNEY: That's correct, Your Honor. I'm Merritt Abney. And I represent Harris. And that is the motion in the second appeal that was filed.

THE COURT: All right. Hold on a second. Let me make sure I got you on my -- all right.

Mr. Goldstein, you are here on the part of the opposing party; is that correct?

MR. GOLDSTEIN: That is correct, Your Honor.

THE COURT: Y'all come forward and have a seat.

Now, you tried to tell me, Mr. Abney, before we started -- I've only seen one motion -- that there are two motions to dismiss, but they track each other. And you admit that one of these matters is moot?

MR. ABNEY: Let me explain there. We are talking about two different things there. One of the matters is below. This started as two separate ejectment actions in the magistrate court.

THE COURT: I read that.

MR. ABNEY: One related to Latino Mix and one related to El Alamo. The court tried both of those cases together. And Mr. Goldstein only appealed the eviction order with respect to El Alamo. They vacated Latino Mix voluntarily. So he filed that appeal, which subsequently resulted in Judge Young's order where the bond amount was changed. And initially bond was set at $60,000. And then Judge Young required the magistrate to reconsider the amount of the bond.

THE COURT: Has magistrate done so?

MR. ABNEY: He has done so and reset the bond.

THE COURT: Is there an order?

MR. ABNEY: There is an order below, yes, sir.

THE COURT: I don't have it. That would help me.

MR. ABNEY: Yeah.

THE COURT: Last thing I have what you handed me was Judge Young's order.

MR. ABNEY: I think that's correct, Your Honor. And so he set that bond --

THE COURT: Hold it. You are telling me on one hand the magistrate has complied with Judge Young's order. I hadn't seen it. Where is it?

MR. ABNEY: I don't have a copy of that order. And that order is really not directly relevant to the issues that we are here about today.

THE COURT: All right.

MR. ABNEY: The only issue is that once that bond was reset, Ms. Santos, the tenant, posted bond. And so we were expecting to go forward on that first appeal. But what Mr. Goldstein did was file a separate amended appeal under a new civil action number. So that's the second matter in which I filed the motion to dismiss, saying, basically, we've already got an appeal out here. And then he tacked on a bunch of tort claims with that second amended appeal. And so as to the tort claims, the essence of the motion is, you can't add tort claims in an appeal.

THE COURT: Since the roster I have only shows one

motion to dismiss filed July 11th, where is the other one?

MR. ABNEY: Well, that was No. 30 and 31. The civil appeal is No. 30. And the motion to dismiss in the first action is No. 31. Your Honor, really, I just want to get the appeal on the merits decided.

THE COURT: Actually, on a previous roster, my law clerk is handing me another roster, No. 31, 32 and 33, all involve this matter.

MR. ABNEY: That's right. Those are the three motions that should be heard together. And when the date changed from tomorrow to today, it appears that only one of the motions got set for the add-on today. That's what happened. All these things should be heard together, Your Honor. That's the only way it makes sense. If you want to continue them until tomorrow, I'm happy to come back tomorrow.

THE COURT: No. Apparently, somebody decided to set this hearing today, even though I wasn't aware of it. So I'm happy to hear from you.

MR. ABNEY: Okay. It may make sense, Your Honor. The motion to dismiss is this simple. In the second appeal, it's a 12(b)(8) argument that we've already got an existing appeal, a claim between the same parties, really, to exactly the same issues. We don't need a second appeal. But like I said, that second appeal --

THE COURT: What is the second appeal for?

MR. ABNEY: It's from the same order.

THE COURT: You told me he asked for some additional relief in the second appeal that wasn't in the first appeal.

MR. ABNEY: So in the first appeal, there was the appeal of the order of eviction from the magistrate. In connection with that order, the magistrate set the bond at $60,000.

THE COURT: I never saw $60,000. I saw 59.

MR. ABNEY: $59,000, 59 and change. And there was a motion to reduce that bond. And that was Judge Young's order. And all he did was say, I want the magistrate to relook at the issue with the bond.

THE COURT: But he also told the magistrate not to consider attorney's fees.

MR. ABNEY: That's exactly right. And the magistrate set the bond.

THE COURT: What was the bond?

MR. ABNEY: I think ultimately came down to $5,500 bucks, is what it was reduced to. And that was posted. And so we were ready to proceed on the merits of that first appeal. But a new civil action was filed styled as an amended appeal, and then tort claims added to that.

THE COURT: Let me see the first appeal and the second appeal, since I don't have either one of them in front

of me.

MR. ABNEY: Okay. Do you have a copy of your appeal?

MR. GOLDSTEIN: Your Honor, that's the appeal that is currently before the Court. And the last page of that appeal is the bond order you were inquiring of counsel about earlier.

THE COURT: Hold on a second. You don't mind if I take a look at them first?

MR. ABNEY: Not at all.

THE COURT: I've been handed, first of all, 2018 at 1008, which is dated May 22nd, 2018. It's an appeal in that case signed by Mr. Goldstein. And it's a summons and then a complaint.

MR. GOLDSTEIN: Can I explain that, Judge?

THE COURT: Uh-huh.

MR. GOLDSTEIN: Years ago, I filed an appeal. And the clerk refused to file it because it wasn't accompanied by a summons. So ever since then, I always put a summons on them.

THE COURT: I've also been handed a notice of appeal dated February 8, 2018, which encompasses two different matters, 2016-CV-08-1060019 and 2016-CV-08-10605290. I've been handed another amended notice of appeal in 2018-CP-08-00266, which purports to appeal the orders of the

magistrate dated November 15th and January 23rd -- November 15th, 2016, January 23rd, 2017, and the order of attorney's fees dated February 9th, 2018.

And with the packet that I've been handed by Mr. Goldstein, there's a lengthy -- well, the pages stopped being numbered -- 26-page order dated December 7th, 2017, of Magistrate Deaton. Then there's an order of Judge Deaton dated February 2nd, 2018, denying Defendant's motion for new trial.

Then there's another order dated February 9th, 2018, by Judge Deaton. Then there's another order dated March 7th, 2018, on a motion for reconsideration. Then there's another order dated February 26th, 2018, on an order on appeal bond signed by, I assume, Judge Deaton. I can't read the signature on there.

Then there's another order dated May 7th, 2018, again, a bond to stay execution on appeal signed by Judge Deaton. Then there's another order dated May 17th, 2018, signed by Judge Deaton.

Now, I thought that would clear it up if I could see it, but it's done nothing but confuse this completely. So who wants to -- Mr. -- you got the floor. You are the moving party.

MR. ABNEY: Your Honor, I filed the motion to dismiss.

THE COURT: I know that. And that's the only motion that's really on the last roster I was given, although I'm told there's a roster for tomorrow that has three other motions on it. So you tell me what you want. I'm willing to hear it.

MR. ABNEY: Okay. So the first ground for our motion is Rule 12(b)(8), as I said. We already had an appeal of the order of eviction and the award of attorney's fees. That was done by Judge Deaton. And that was an appeal.

THE COURT: And you agree it was a timely appeal?

MR. ABNEY: I do agree it was a timely appeal. I do not oppose that. I want that appeal heard on the merits.

So what I did, when he filed the second appeal, which he combined a bunch of tort claims, I filed a motion to dismiss on the grounds that, look, as to the appeal piece of this, we've already got another appeal between the same parties over exactly the same issues. So let's dismiss with that. Again, I just want to get the appeal heard on the merits, one appeal.

And then as to the addition of all these tort claims, you can't raise new claims on an appeal. We've cited in our briefing case law to that effect. And even if Your Honor, even if you allow him to combine tort claims with an appeal, which is not permitted, the tort claims should be dismissed under 12(b)(6), because all the claims do is say we

filed an eviction action with an ulterior motive, so that we essentially abused the process, legal process, by filing an eviction action, which we won.

The judge below found that the nightclub that is the premises at issue, the tenant is operating a public nuisance and routinely violating the law. And that was the primary grounds on which we sought eviction. We won that.

All of the tort claims in the second appeal revolve around the claim that we filed that eviction action because the tenants are Hispanic and because we were trying to abuse their civil rights. It amounts to all those claims. No matter how they are styled, they amount to a claim for malicious prosecution. And one of the key requirements of a claim for malicious prosecution --

THE COURT: Is action was successfully ruled on --

MR. ABNEY: That's right, resolved in their favor. And we won. And as it stands right now, we are the prevailing party. You can't pursue a claim for malicious prosecution against us. And you can't get around that requirement by styling them as conspiracy or some other cause of action.

THE COURT: Thank you.

Mr. Goldstein, let me hear from you. I've got a lot of your documents up here.

MR. GOLDSTEIN: Yes, sir. May it please the Court.

THE COURT: Because I wanted to see what appeals we were talking about, which the record is probably confusing on this. But we agree that all that's left as far as -- and I will let you argue your side of this -- but there's only one tenant that's left. The other tenant, the action is moot because you voluntarily vacated the premises.

MR. GOLDSTEIN: That is correct.

THE COURT: Now, there are two motions that he tells me to dismiss. Although there's only one on my roster. I am informed tomorrow that the others are on the motion. I'm trying to hear everything so y'all don't come back tomorrow. Although the way it looks, I'm going to have to postpone my surgery in Charleston this week just to stay in Berkeley County to hear your motion. So go ahead.

MR. GOLDSTEIN: My name is Tommy Goldstein. I represent the appellant in this case and the plaintiff. Before we address the merits of the case, I want to rise, Your Honor, and I want to speak in defense of Ms. Williamson. The confusion with the roster, Your Honor, is my fault, not Ms. Williams's fault. So, please, do not be upset with her. She moved us to today to accommodate me.

THE COURT: She just didn't bother to tell me. And that's something that I will take up with her. That's between me and her, not between -- but between you and I, you want a continuance of a matter, you don't go to a clerk. You

come to me, Mr. Goldstein. And I can tell you right now, clerks don't continue cases. And they don't set cases for hearing, because they don't have to hear them. I do.

MR. GOLDSTEIN: I understand.

THE COURT: And, obviously, the clerk doesn't know my schedule. She didn't have any idea I had surgery scheduled this week. She didn't have any idea that I had to have an abbreviated schedule. Nobody -- even though I communicated with Judge Young about it, apparently, it didn't get to her. So that isn't her fault. But if she's going to set a matter for hearing and she's not the person hearing it, you need to come to the judge to set a matter for hearing, not to her.

Proceed.

MR. GOLDSTEIN: I apologize, Your Honor. I want to take responsibility. The case is a lot simpler than Your Honor has formed an opinion about. There are -- there were two appeals, but I sat here on the front bench and I listened to Your Honor, the very first case you made, it was funny, a joke about, you are either pregnant or not pregnant, either a little bit pregnant or not pregnant. Judge Young remanded the first appeal --

THE COURT: On the issue of the bond.

MR. GOLDSTEIN: That's right. That's right.

THE COURT: However, then he added a sentence that

said, not only do I want you to tell me what factors you used in the bond, but I am not going to allow you to determine attorney's fees as part of the bond. You agree with that?

MR. GOLDSTEIN: That's right. So Judge Deaton conformed to that order and reset the bond at $5,500. So I then filed a second appeal, because I took the impression that, again, using the little bit pregnant or a lot pregnant argument, that once the case was remanded back to Judge Deaton, the circuit court had lost jurisdiction. Now, maybe I was wrong about that.

THE COURT: Yeah, you were very wrong about that, because you had timely filed your notice of appeal. It was remanded, not reversed.

MR. GOLDSTEIN: All right. Well, I have no problem whatsoever severing the present action and sending the appeal back under the old case number. I have no objection to that whatsoever. The appeal needs to be decided.

Mr. Abney tells you that he was the prevailing party. That's not exactly correct. He brought an ejectment action on three causes of action. I prevailed on two. He prevailed on one. So who is the prevailing party is subject to some dispute.

I did not bring a tort case for malicious prosecution. I brought a tort case for conspiracy, violation of civil rights, and for tortious interference with respect

to business relations. Now, however Your Honor --

THE COURT: He argues that you can't bring up a new matter on appeal regardless of whether you style it conspiracy or malicious prosecution, because there's been no underlying determination of that matter in a trial court.

MR. GOLDSTEIN: I agree with Your Honor. He's right about that. And I wasn't trying to do that. It's just the case is in a peculiar procedural posture. So I chose a path. And if the path I chose complicates rather than simplifies, I'm happy to sever off the appeal, send it back to the 166 case number, and allow my tort case to go forward on its own merits, or demerits, as a separate stand-alone action.

THE COURT: In magistrate's court?

MR. GOLDSTEIN: No, no, no, no. My tort cases are filed --

THE COURT: In circuit court?

MR. GOLDSTEIN: Correct, as a matter of first impression. Those matters were never litigated in the magistrate court. The only issue litigated in magistrate court was, were they entitled to eject or were they not entitled to eject.

THE COURT: So the only issue on appeal is that?

MR. GOLDSTEIN: That's right. And in order to decide the appeal, you need the transcript. The transcript is being prepared. And it's a very difficult process because

it's a bilingual transcript that I had to send to Texas to get done. And you have got to read the transcript, because the transcript is horrifying. I am not going to tell you about some of the testimony. But there's little doubt that my clients were singled out and discriminated against based on the fact that they are minorities.

But you can't decide that without the transcript, unless you want to let Mr. Abney and I summarize the testimony for you. I don't know how you would do that.

So I'm here. I'm happy to handle it any way that best suits the Court, that best suits -- that's fair to opposing counsel. But, Judge, I am not going to cite the law to you on 12(b)(6) motions, because that would just be insulting to you.

THE COURT: That's not insulting. Believe me, I have lawyers do it every term of court.

MR. GOLDSTEIN: I brought the case if you want it. It's *Spense v. Spense*. If you want the case, I can hand it up.

THE COURT: You know, I have no transcript, no return. And I'm asked to be dismissing an appeal that I have no idea what was before the Court below. And I now find out that you had to have a translator and don't have a record now to do it. And it becomes more convoluted every attempt I try to make -- try to hear it.

I recognize, Mr. Abney, that there is -- this action is pending between the same parties. I also recognize that you would have to file a motion for summary judgment in circuit court as to the new tort actions, which you hadn't done. These are both notices, motions to dismiss. And, yet, I don't know anything about what occurred in the magistrate court, except that you both agree that one is moot.

And I will be happy to entertain any way you all want to try to resolve it. But it seems like it's premature to me today, even though I tried to accommodate you, because apparently, y'all were told that I would hear this today. And I didn't know that you were told that. But she says she gave me this roster this morning. But my law clerk updated it at lunch, and I didn't have this on here. So I had no idea that I had it, but we are here. So y'all tell me. I think it's probably premature for hearing it.

MR. GOLDSTEIN: That's my position.

THE COURT: Whether it's your position or not, that's the Court's position, Mr. Goldstein. I am not agreeing or disagreeing with the merits of your argument.

MR. ABNEY: Your Honor, my response to that would be, the return has been filed from the magistrate. And it has the recording of the entire trial. I understand you probably don't want to sit there --

THE COURT: Not only that, I am not bilingual. So I

am not going to understand it if I listen to it.

MR. ABNEY: There was an interpreter at trial. So it's all in English.

THE COURT: Has it been certified by the magistrate?

MR. ABNEY: That's correct.

THE COURT: Was it typed or taped?

MR. ABNEY: They just recorded it.

THE COURT: See, they are not a court of record. So I need a return in writing from the magistrate other than the order.

MR. ABNEY: Well, I think he filed -- he filed the recordings of the -- with the return. So that was part of his return. So there's no written transcript, but there is a recording.

Mr. Goldstein, respectfully, has had the better part of a year to have that transcribed. We were here in front of Judge Nicholson four or five months ago when he continued this appeal. And he raised this issue that y'all should probably get a transcript. Mr. Goldstein is the appellant. It's his burden to provide a transcript to the Court to have a record to review.

THE COURT: That's the whole reason he had to post a bond too, but --

MR. ABNEY: I just want to decide. It keeps getting kicked down the road.

THE COURT: I'm trying to accommodate you, but I feel like I need more information. I don't know that my -- how long was this trial? Were you there?

MR. ABNEY: Oh, yeah. It was a one-day bench trial. And, Your Honor, I really -- respectfully, I don't even know what the basis for the appeal is except that there is allegedly no evidence for the order of eviction. There is a mountain of evidence in the return that supports the order of eviction.

THE COURT: Let me see y'all in chambers.

MR. ABNEY: Sure.

(Whereupon, a recess transpired.)

THE COURT: We are on the record now, Karen. And present is Mr. Abney and Mr. Goldstein. I have discussed this matter with the parties in chambers. Mr. Goldstein now has agreed to mark 2018-CP-08-010008, which is his second notice of appeal, for which you have a motion to dismiss.

He now agrees to withdraw his second notice of appeal. You will also, accordingly, withdraw your motion to dismiss, which makes the second notice of appeal moot. And your motion to dismiss is moot. All right?

Because you do not have a transcript, both of you are encouraged by the Court to try to work out an agreement for the transcript. The problem is, this was a bilingual person. And there's a tape, but we have a translator who is

trying to translate. So we have that. I don't know whether that person was certified according to the rules or not. But if they were, then there has to be a record for the Court to decide in order to decide your other motion to dismiss.

So the other motions are going to be continued. So y'all won't have to come back tomorrow. And it will not be scheduled until you've either agreed on the record or there is a transcript of the record for which you both agree is a certified record for the purposes of the appeal, so the Court can review that record when it hears the appeal.

Have I accurately stated what y'all have agreed to in chambers, Mr. Abney?

MR. ABNEY: Yes, you have, Your Honor.

THE COURT: Now, there was one caveat. What was it, Mr. Goldstein?

MR. GOLDSTEIN: That since my second appeal which I am now withdrawing is appealing subsequent orders from my first appeal, that I have to amend --

THE COURT: -- your first appeal to include the subsequent order.

MR. GOLDSTEIN: And I will do that within seven days.

THE COURT: You agree to that, Mr. Abney?

MR. ABNEY: I do, Your Honor.

THE COURT: All right. Mr. Goldstein will amend his

first notice of appeal to include an appeal from the second or most recent order of the Court. And he will do it within seven days of today. Now, do you all want an order to this effect?

MR. GOLDSTEIN: Whatever the team wants. I'm part of the team. I don't require a detailed order. A Form 4 will suit me.

THE COURT: Mr. Abney, do you want an order?

MR. ABNEY: I would like an order, Your Honor.

THE COURT: And I'm going to ask you to prepare the order.

MR. ABNEY: I will be happy to.

THE COURT: I'm going to expect you to prepare it within seven days of today. In that order, you will put Mr. Goldstein withdraws his second notice of appeal, but he gets to amend the first notice of appeal to include the latest order of the Court. You withdraw -- or you will mark as moot your motion to dismiss in 2018-CP-08-010008.

The other motions in connection with this matter are continued. And they are not to be scheduled, to be heard until there is a transcript of record for which the Court can review. Do you understand?

MR. ABNEY: I understand, Your Honor.

THE COURT: Don't y'all ask her to set another hearing on this until y'all got a transcript, since it was

continued last time because you didn't have a transcript. All right? Does that include everything now?

MR. ABNEY: It does.

THE COURT: And you will prepare the order within seven days and send it to me, PO Drawer 470, Walterboro, 29488. Copy Mr. Goldstein on the transmittal to me. You can e-mail it to me at pbucknerj@sccourts.org. And you can send my law clerk a working copy at pbucknerlc@sccourts.org. Any United States mail or e-mail transmittal to the Court, you must copy opposing counsel.

MR. GOLDSTEIN: Understood.

THE COURT: Is that everything now, Mr. Abney?

MR. ABNEY: It is.

THE COURT: Is that everything, Mr. Goldstein?

MR. GOLDSTEIN: It is.

THE COURT: Thank you both for your patience. I'm glad we were able to work one of the matters out. Appreciate your time. You are now excused.

CERTIFICATE OF REPORTER

I, Karen V. Andersen, Registered Merit Reporter, Certified Realtime Reporter for the State of South Carolina at Large, do hereby certify that the foregoing transcript is a true, accurate and complete Transcript of Record of the proceedings.

I further certify that I am neither related to nor counsel for any party to the cause pending or interested in the events thereof.

Karen V. Andersen
Registered Merit Reporter
Certified Realtime Reporter

STATE OF SOUTH CAROLINA	)	THE COURT OF COMMON PLEAS
	)	
COUNTY OF BERKELEY	)	DOCKET NO. 2018-CP-08-0266
	)	2018-CP-08-1008
	)	
	)	
	)	
ARACELIS SANTOS	)	
	)	
Plaintiff	)	
	)	
vs.	)	
	)	
HARRIS INVESTMENT HOLDINGS, LLC	)	
	)	
Defendant	)	
	)	
	)	
	)	
	)	TRANSCRIPT OF RECORD

June 3, 2019
Moncks Corner, S. Carolina

B E F O R E:

THE HONORABLE KRISTI F. CURTIS, JUDGE

A P P E A R A N C E S:

THOMAS R. GOLDSTEIN, ESQ.
Attorney for the Plaintiff

MERRITT GORDON ABNEY, ESQ.
Attorney for the Defendant

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No.	Description	Marked / Admitted
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2	Photo	

PROCEEDINGS

THE COURT: Good afternoon. If you all will, tell me your names?

MR. GOLDSTEIN: Tommy Goldstein. Well, there are two cases -- Tommy Goldstein for the appellate on 2018-CP-266 and for the plaintiff on 2018-CP-08-01008.

MR. ABNEY: And I'm Merritt Abney for Harris Investment Holdings in both cases.

THE COURT: Mr. Abney?

MR. ABNEY: Abney.

THE COURT: A-B-N-E-Y?

MR. ABNEY: That's correct, Your Honor.

THE COURT: Okay. I saw some correspondence there were a number of motions that were pending and I believe I saw some correspondence that your third amended appeal took the place of several of these motions?

MR. GOLDSTEIN: That's correct, Your Honor.

THE COURT: Tell me what is currently pending.

MR. GOLDSTEIN: I prepared a timeline that might help you.

THE COURT: Okay.

MR. GOLDSTEIN: If I may approach or hand it to the Bailiff -- or Deputy; I'm sorry.

THE COURT: Sure.

[Whereupon, Mr. Goldstein provides documents to the

Court]

THE COURT: Thank you.

[Whereupon, the Court reviews documents]

THE COURT: Okay Mr. Goldstein I'll hear from you since you are the appellant in at least the first case and then we'll go from there.

MR. GOLDSTEIN: Well, most of the appellant's case is ended. It's moot. And if you care to -- none of this is going to make sense without reference to the timeline; I've just got to warn you.

THE COURT: Sure.

MR. GOLDSTEIN: And if I can just so we can ---

THE COURT: --- if you want to give me a little background ---

MR. GOLDSTEIN: --- right ---

THE COURT: --- I'm happy to ---

MR. GOLDSTEIN: --- that's what I'm going to do. If I could get your court reporter to mark two photos, one or two or A or B; it doesn't matter.

[Whereupon, Plaintiff's exhibit numbers 1 and 2 are marked by the court reporter]

[Whereupon, exhibits are provided to the Court]

MR. GOLDSTEIN: All right. Let me walk you through the timeline and I'll try to do it in less than two minutes. Mr. Abney's client purchased this building a

few years back. My client occupied it and was running two businesses; a grocery store, convenience store that catered to the Hispanic population and a restaurant/night club that catered to the Hispanic population. After Mr. Abney's client took over the ownership there was some friction and a number of cases arose simultaneously.

The first shot across my client's bow was the City of Hanahan attempted to revoke his business license. In conjunction with that Harris Investments then began an ejectment process. That case went before the Honorable Rad Deaton who is the Magistrate at Goose Creek.

We had a non-jury ejectment action trial. The landlord, Harris Investments brought an ejectment action based on three alleged grounds. I succeeded on two, they succeeded on one. Judge Deaton ordered the ejectment on the one cause of action alleging nuisance.

At that point I filed an appeal. That became case number 2018-CP-08-266. Judge Deaton also awarded -- the landlord's law firm made an application for 55,000 dollars in attorney's fees. Judge Deaton awarded about 34,000 dollars. I appealed that. Again, that's case 266.

Judge Deaton then entered an appeal bond in accordance with the statute and he required my client to pay the attorney's fees as the bond. I appealed that.

That matter came before Judge Young. Judge Young ruled the Magistrate was in error, that you cannot set an appeal bond for attorney's fees. Attorney's fees is a money judgment, so he remanded that matter back to Judge Deaton.

Judge Deaton then, we had a couple of hearings and a couple of disputes and he ultimately entered an order requiring the plaintiff, the tenant; I'm sorry, Your Honor, the tenant to post 5,500 dollars with the Court as a condition of appealing and pay the rent on time of course. We did that. Again, that's case 266.

In the meantime the lease according to Harris Investments expired of its own terms at which time they said get out. We took issue with that because paragraph 22 of the lease provides for a hold -- has a holdover provision which basically allows the tenant to hold over in exchange for paying an enhanced rent of 150 percent, so anyway.

The case went along and it rocked along and we had some, we had a considerable difficulty in preparing the transcript but ultimately the transcript got prepared and got filed. At that point I draw the Court's attention to the two photographs that I have marked as exhibits one and two. If you look at the photograph on plaintiff's exhibit one or appellant's exhibit one on or about March

18th of this year that photograph depicts what the landlord did to the building. The landlord knocked down the door, claimed that the tenant could not enter. And you can see the photograph speaks for itself.

I jumped in my car and ran over there. I was met by armed police officers from the City of Hanahan who informed me that the City of Hanahan had dispatched them to stand guard over the building to make sure that neither my client nor I entered the building.

At that point I filed a Motion for a Temporary Restraining Order the day after this photograph was taken. While that motion was pending, and this is astonishing, the landlord demolished the building. There is no more building. The landlord demolished the building and all of my client's refrigeration equipment, bar, mirrors, food service prep equipment and all that.

I thought that was a rather unique resolution to a landlord tenant dispute and as a result I filed a new lawsuit at 2018-CP-08-1008. After the landlord -- and just prior to the landlord demolishing the building I was struggling with trying to stop it. I was trying to schedule a Motion for Temporary Restraining Order with this Court. I was unsuccessful.

THE COURT: I'm sorry. You were trying to stop the demolition?

MR. GOLDSTEIN: Well, I was trying to stop the interference with the right of quiet enjoyment. I had no idea they were going to demolish the building.

THE COURT: So you had filed case number 1008 prior to the demolition?

MR. GOLDSTEIN: Correct. Correct, because not only had the landlord done what I've shown you in photo number one, plaintiff's exhibit one or appellant's exhibit one but also had SCE&G go and pull the meters off the building as well. So I was scrambling trying to restore power to the building and to gain access to the building.

Now remember once we filed the appeal bond my client was occupying that building pursuant to a court order. Anyway, I was unsuccessful in scheduling a Motion for Temporary Restraining Order and over that weekend following taking these photographs the landlord demolished the building.

So that moots three fourths of case number 2018-CP-08-266. The only issue left for the Court to decide is my appeal on attorney's fees because I appealed that. So that issue is live and is appropriate for Your Honor to decide.

But that's the only issue left in case number 2018-CP-08-266. As to 2018-CP-08-1008 which I call the tort case to distinguish it from the appeal from the

Magistrate I had filed a Motion to Amend the Complaint because I now seek to add the contractor who demolished the building, the City of Hanahan for their conspiracy and coordination with the contractor and the landlord, and a specific individual who I believe coordinated this entire event. So that Motion to Amend is pending before the Court.

In contrast, and Mr. Abney can of course speak for his client, he has a Motion to Dismiss my appeal. And I guess it would be appropriate for him to tell you about that before I respond to it unless you want me to go ahead and respond to it now. It probably makes more sense for him to tell you about his Motion to Dismiss.

He also has a Motion to Dismiss my tort case. And I'm not sure I understand that motion. If it's a 12(b)(6) motion then I have attached my timeline of case excerpt from the leading case on dismissal under 12(b)(6) which is Spence v Spence.

But again, I'll allow him to address his motion and then I'll reply to that because the facts of this case have changed substantially now that the building has been leveled. So did any of that make sense or did I just confuse you more ---

THE COURT: --- yes, I was just looking for ---

MR. GOLDSTEIN: --- than you were when I started?

THE COURT: I see the Magistrate's Return. I was looking for a copy of I assume there is some order from the Magistrate in which he awards ---

MR. GOLDSTEIN: --- yes ---

THE COURT: --- attorney's fees, etcetera?

MR. GOLDSTEIN: --- right. And I have appealed that. Would you like me to address that now? I was just giving you ---

THE COURT: --- I'm just trying to put my hands on that.

MR. GOLDSTEIN: Well, I have a hard copy here if that's easier for you.

THE COURT: That would help.

[Whereupon, Mr. Goldstein provides documents to the Court]

[Whereupon, the Court reviews documents]

THE COURT: Because initially my question was whether they have -- whether the Magistrate has jurisdiction to award attorney's fees in excess of 7,500 dollars. I understand that the Court has jurisdiction to grant an eviction in cases where the rent exceeds 7,500 dollars.

But my interpretation of that, and I'm glad to hear what your position is on this, is that the Magistrate Court has jurisdiction pertaining to back rent there is

no jurisdictional limit so whether it's back rent of 7,500 dollars or 25,000 dollars that you've got jurisdiction over that. But this is the additional step of awarding, making an award of attorney's fees which is well over the 7,500 jurisdictional limit. So I guess let me hear from Mr. -- I'm sorry?

MR. GOLDSTEIN: Abney.

THE COURT: Mr. Abney. And then I'll be glad to hear from you in response.

MR. GOLDSTEIN: Thank you, Your Honor.

MR. ABNEY: So I don't believe the jurisdictional issue was ever addressed in the notice of appeal but my recollection is this was addressed either at the hearing if not in the order ---

THE COURT: --- it looks like it is addressed in the order.

MR. ABNEY: Okay, with the order. And so my understanding of the jurisdictional, the statute, for the Magistrate is if there is a dispute over possession of land the 7,500 dollar jurisdictional limit does not apply.

And the statute as I read the statute it doesn't distinguish between damages for back rent or damages for attorney's fees which are -- which we're entitled to only by virtue of the lease for the property. And as to the

amount of the fees you can see in the order the Court went through all of the factors. We addressed all the factors in our Motion for Attorney's Fees and we've addressed those in our Return to Respondent's Brief in response to Mr. Goldstein's appeal.

THE COURT: The 34,000 dollars in attorney's fees in a Magistrate Court ejection action seems like a lot.

MR. ABNEY: Your Honor, it was a year-long case. We were in Court in front of Judge Deaton on motions at least four times before the actual trial of the case. And so there was a lot. I submitted all of our invoices. The Magistrate went through them, reviewed them and made the findings that he made regarding the reasonableness of the fees.

It's simply by virtue of the fact that this took a very long time to get to trial. And it was not a simple trial. There were some -- I believe there were nine, eight or nine witnesses at the trial. It lasted an entire day. So it was not your typical tenants failed to pay rent and we're seeking ejection.

The basis, just so you know, the basis for the eviction which was filed three years ago was -- again so going back to the lease for El-Alamo [phonetic]. This was for a three year lease from the end of 2015; December 1, 2015 through November 30th, 2018. We filed the

eviction action in 2016. And the basis, the primary basis for the eviction was the facilitation and commission of criminal activity by the tenant on the property.

Judge Deaton's finding was in his ejectment order was that Santos has maintained El-Alamo [phonetic] as a place where the laws are publically, repeatedly, persistently, and intentionally violated thus disturbing the public peace.

So that was the primary basis for the eviction. They were also failing to pay rent but ultimately the Magistrate, and we included that as an additional ground but the Magistrate concluded that was immaterial to the ultimate decision. The basis for his eviction order was violation of laws on the property, facilitation of criminal activity and the creation on the property of a public nuisance.

So that was the eviction order that was issued at the end of 2016 or '17; I'm trying to recall. But in any event the appeal from that order as you've heard this was filed two years ago when the appeal was initially filed. And it sat for so long because we showed up here four or five different times in front of Judge Nicholson, in front of Judge Buckner, in front of Judge McCoy. And every time we got here the appellant had not prepared a

transcript of the proceedings below and so the appeal continued to be continued. During that time ---

THE COURT: --- how do you do a record from a Magistrate Court hearing? Is there a recording?

MR. ABNEY: There is a recording and the Judge wanted it transcribed and actually ordered Ms. Santos to have it transcribed and provided to the Court.

THE COURT: What Judge ordered that?

MR. ABNEY: Judge Buckner. Judge Buckner ordered that in August of 2018; last year. So that went on and then we get to the end of 2018 and the lease term is up at that point. And so we provided notices as Mr. Goldstein had said we are retaking possession of the property upon expiration of the lease because the law allows us to do that and we did that.

We attempted to do that by trying to post a fence around the property initially and by changing the locks. The tenant pulled the fence up, broke into the building, and barred the door so that we could not enter our own property.

And then we discovered there was asbestos in the building. We provided them notice that we were going to remediate the asbestos. We did so and determined that the asbestos was throughout the building and ultimately made the decision to demolish it, which we did.

THE COURT: So are you in agreement that in case 266 the only issue left is the attorney's fees issue?

MR. ABNEY: I think that's right. Yes, there is no I mean they're not going to continue to occupy a building that is not there. So I agree that that's the only remaining issue in that case.

THE COURT: Okay. Do you want to go ahead and address your Motion to Dismiss the 1088 [sic] case?

MR. ABNEY: Sure. So the timing was a little off in Mr. Goldstein's timeline with respect to the 1008 action, the second action that was filed. That was filed in May of 2018. And it was an appeal more or less the same appeal that was initially filed in the two -- 266 case. But it also attached and included tort claims. So we immediately moved to dismiss that case back then on the ground that you can't do this.

You can't file an appeal along with tort claims because one issue that we were looking at I mean its alleging a violation of civil rights and so we're looking at a potential for removal to federal court. We can't remove a case that is styled as an appeal to -- of a Magistrate's Court order in state court.

And so we filed that motion. That motion was resolved. That Motion to Dismiss was resolved by an order issued by Judge Buckner in October of 2018 which

expressly said that the 1008 action would be dismissed without prejudice; the idea being that the case will be dismissed. If Mr. Goldstein wants to file a tort case he can do so. But he can't file, he can't bring a case like this; this sort of combination appeal tort claims.

That case has never been withdrawn. And we were here in front of Judge McCoy back in January on precisely that issue. And I had understood Mr. Goldstein to stand up and say that it would be withdrawn at that time but it still has not been withdrawn as of today. So the first ground for our Motion to Dismiss the 1008 case is that the Court has already ordered that it should be dismissed. And Mr. Goldstein refuses to do so. So that's ground number one.

The second is substantive. And essentially there are two categories of claims that are being alleged. The first category is that you wrongfully sought to evict me in the first place. You had bad motives in trying to interfere with my enjoyment of the property and evict me through the Courts.

Whatever you call that, I mean he styled it as civil conspiracy, violation of civil rights; all these things. That is a malicious prosecution case. That is you used the Court system for a bad reason. And it should be analyzed as a malicious prosecution claim, which requires

in every case that you have to first succeed on the merits in order to be able to assert that claim. Obvious Ms. Santos can't make that showing because she lost in front of the Magistrate and was evicted. So that category of claims should be dismissed on that basis.

The second category of claims is that after the lease term was up in November of 2018 you interfered by trying to change the locks. You interfered by putting a fence around the building. You interfered by demolishing your own building. Well, those claims are precluded by South Carolina law as we cited in our brief the Rush case and the -- Rush v Aiken Manufacturing, the Supreme Court decision along with Barbee v Winnsboro Granite Corporation.

These cases squarely hold that the rule in South Carolina is that when a tenant in violation of the terms of the lease refuses to vacate the building after the lease term is up a landlord can retake possession and cannot be liable in civil -- on a civil tort claim for attempting to do so. So those claims as a matter of law are squarely precluded by that body of law.

So that effectively disposes of the claims in the tort case either on the procedural ground of they've already been ordered to be dismissed in which case Mr. Goldstein could have re-filed them in a separate action

or on the substantive ground that they don't state valid claims under South Carolina law.

THE COURT: I'm looking for a copy of the order.

MR. ABNEY: Yes, I have it.

[Whereupon, Mr. Abney provides documents to the Court]

[Whereupon, the Court reviews documents]

THE COURT: Okay. I do see in the order of Judge Buckner, and it was in my materials here; I just didn't recognize that that's what I was looking at. I see that Judge Buckner states Santos filed a second civil action in this Court, which was the case number 2018-1008 which he calls the second appeal.

And the order of the Court -- it says with the consent of the parties is that Santos will dismiss the second appeal without prejudice and Harris Investments will drop its Motion to Dismiss the second appeal without prejudice. So I guess...

MR. GOLDSTEIN: And Your Honor may I say ---

THE COURT: --- Mr. Goldstein ---

MR. GOLDSTEIN: --- that's exactly what I did. Exactly.

THE COURT: Okay. So how is case number 1008 still pending?

MR. GOLDSTEIN: I dismissed the appeal and I filed

a third amended appeal on -- actually I filed my third amended appeal before we got Judge Buckner's order. After we met with Judge Buckner before we got his order I went ahead and did what he told us he was going to order. I did exactly to the letter what Judge Buckner told me.

THE COURT: Well, I don't know that you did because if you did we wouldn't have a case number 1008 pending.

MR. GOLDSTEIN: No, I dismissed the appeal and I re-filed the appeal under 266 so the appeal got severed off and sent back.

THE COURT: What case are you telling me that you dismissed the appeal, what case number?

MR. GOLDSTEIN: I dismissed the appeal part of 1008. I took the appeal out and re-filed it, which is what Judge Buckner told me to do so that now there was a separate tort case and a separate appeal.

THE COURT: Are you saying that that's what you did in your...

MR. GOLDSTEIN: I filed my third amended notice of appeal on August 13th, 2008 [sic]. We got Judge Buckner's order on October 2, 2018. I sent it to the Clerk with a letter that says quote, pursuant to Judge Buckner's order, which had not yet been reduced to writing by the way; pursuant to Judge Buckner's order I enclose the original and extra copy of appellant's third amended

complaint and a proof of service. By copy of this letter I am filing the third amended notice of appeal with the Clerk of Court's office in Goose Creek and providing a copy to opposing counsel.

So the cases were bifurcated. The tort case ---

THE COURT: --- so that third amended notice of appeal what's that case number?

MR. GOLDSTEIN: 266. So I went back to 266. So now there is an appeal standing alone and a tort case standing alone. What counsel objected to was the combination. He said you can't combine, he said Goldstein you idiot, you can't combine, he didn't say idiot; that's my hyperbole. He said Goldstein you can't combine an appeal with a tort case. I said you're right.

So I severed the appeal off, sent it back to 266, and now my tort case stands alone because Judge, I mean let's cut through the weeds. What if he's right; I dismiss my tort case on Monday and refile it on Tuesday and pay Berkeley County another 150 bucks. I mean is that what this is about?

MR. ABNEY: That's exactly what it's about, Your Honor. That's what we want; a clean case. If he's going to file a tort case we want it filed cleanly so we can analyze whether or not that case is subject to removal for either on diversity or the basis that it is seeking

remedy for violation of civil rights. That's what I asked Judge Buckner for and that's what I got expressly in the order.

THE COURT: And I don't see anywhere in here where you have amended your pleadings to reflect that it's now this different type of case.

MR. GOLDSTEIN: Well, I have a Motion to Amend pending. That's before you today.

THE COURT: I understand. But I thought that was to add the City of Hanahan ---

MR. GOLDSTEIN: --- correct ---

THE COURT: --- to add the contractor, to add some other individual.

MR. GOLDSTEIN: That's correct.

THE COURT: I don't see any proposed amended pleadings at least within -- I see a Motion to Amend the Pleadings.

MR. GOLDSTEIN: Right. The amended pleadings ---

THE COURT: --- what this says ---

MR. GOLDSTEIN: --- I'm sorry.

THE COURT: What this says that Judge Buckner signed and he indicates that y'all agreed on Santos will dismiss the second appeal without prejudice.

MR. GOLDSTEIN: That's exactly what I did.

THE COURT: It's not what you did because we still

have the case pending. You didn't dismiss the case without prejudice. And that's what he indicated y'all had agreed to back at the time of this hearing is that you would dismiss 1008 without prejudice and then file in a separate actions whatever you're going to file.

And so I don't have a dog in this fight. I don't care how we get there but a previous judge has already addressed that issue and has already made a ruling. So I'm not going to go back and say what Judge Buckner really meant was you can do this or you can do that.

It's clear to me he says you're going to withdraw it without prejudice which gives you the opportunity to refile it in some kind of clean form. And again it says that this was with the consent of the parties.

MR. GOLDSTEIN: It was with consent. That's correct.

THE COURT: So I think we need to do that for you to be in compliance with what Judge Buckner ordered back in September of 2018. I don't know any other way to read this because he specifically sets out that the second civil action is 2018-CP-08-1008 comma the second appeal.

MR. GOLDSTEIN: Right, the second appeal.

THE COURT: And that you will dismiss the second appeal without prejudice.

MR. GOLDSTEIN: That's what I did.

THE COURT: It's not what you did Mr. Goldstein. I'm not trying to fuss but ---

MR. GOLDSTEIN: --- okay, I understand. If that's your ruling I don't want to argue with the Court. I understand. That's what I intended to do.

THE COURT: It's not my ruling; its Judge Buckner's ruling.

MR. GOLDSTEIN: Okay.

THE COURT: So I don't know how we get around that.

MR. GOLDSTEIN: Well, can I -- may I reply to the attorney's fees argument?

THE COURT: Certainly.

MR. GOLDSTEIN: When we came before Judge Young on the Motion to Remand or Reset the Appeal Bond or to amend the appeal bond Judge Young ruled that an award of attorney's fees is a money judgment, that was his ruling, and he remanded it back because he instructed the Magistrate you can't set an appeal bond on a money judgment. A money judgment is a money judgment.

So I went back to Judge Deaton and he reset the appeal bond at 5,500 dollars. So their award of attorney's fees is a money judgment. The Magistrate has no jurisdiction to set -- to enter a 35,000 dollar money judgment against my client. Now as for Judge Deaton's order it is a well-written order. I mean you got to give

Judge Deaton credit. He's a good judge. He went through it. And you know he wrote his own order. I mean I think it's pretty impressive. He doesn't have a law clerk. So it's a very thorough analysis of South Carolina law.

But the flaw, the legal error in the order aside from jurisdiction is there is no evidence to support it. There is no evidence in this record to support any of his findings about contingency of compensation.

There is no evidence in this record that Harris Investments actually paid this about the nature and difficulty there is -- as Judge you've already pointed out there is really nothing difficult about a half day, and it was a half day not a day, non-jury trial ---

THE COURT: --- well, I'm starting to understand the complication of the case. My biggest issue frankly Mr. Goldstein is I want to look carefully at the jurisdictional issue because again my understanding was always if you are in a Magistrate hearing in an ejectment, an eviction action and rent can be 2,000 dollars a month it could be 20,000 a month ---

MR. GOLDSTEIN: --- that's right ---

THE COURT: --- but if you are determining whether they owe back rent in any amount you can grant that eviction regardless of the monetary amount.

MR. GOLDSTEIN: That's correct.

THE COURT: However, if the landlord is claiming that you breached the lease and now they are damaged in the amount of 55,000 dollars because the rent was 11,000 dollars a month and you breached it however early and that they have damages, prospective damages that the Magistrate does not have jurisdiction to issue a judgment saying you get damages in the amount of 55,000 dollars but you are limited to 7,500 dollar jurisdictional limit.

So that's where I'm kind of struggling with whether we've got a Magistrate has jurisdiction to order attorney's fees over 7,500 dollars.

MR. ABNEY: May I respond to that one?

THE COURT: Sure.

MR. GOLDSTEIN: Wait until I finish with mine. If I could just say there is no evidence supporting Judge Deaton's rationale other than the self-serving affidavit that was not subject to cross-examination, no opportunity for cross-examination. And let me just point out one page. I'm just going to stop with one page.

THE COURT: Sure. I'm glad to hear from you.

MR. GOLDSTEIN: This application for ejectment is a one-page document. You check the box and you sign it. 2.9 -- 3.9 hours they billed for that, for a one-page document at 380 dollars an hour. Now they didn't get 380 dollars an hour but the record in this case does not

support the application for attorney's fees and it doesn't support any of the factors. And I'll sit down on this last point.

Judge, remember where the rule on attorney's fees is in the rules. It's in the Rules of Professional Responsibility. It's an ethical rule. It's unethical to overcharge a client attorney's fees. As lawyers we are required by the rules that govern our conduct to bill our clients a reasonable fee. Nothing wrong with lawyers making money; I'm not opposed to that at all.

But that's where that rule is in Rule 407 Rule 1.5. And I don't think Judge Deaton gave this much of an analysis and I don't think there is anything in the record to support 34,000 dollars in attorney's fees even if you could get past the jurisdiction.

THE COURT: Thank you. Yes, sir?

MR. ABNEY: So I'm well aware of the prohibition on overbilling clients and I don't do that. My client -- in the affidavit it does say that my client paid these fees. And I submitted very detailed timesheets for two years worth of work in connection with the affidavit which Judge Deaton went through exhaustively. So I would point the Court to those portions of the record that are discussed in the order and also in our Return to the appeal. As far as the jurisdictional issue if Your Honor

is looking at that I would like an opportunity to brief that because that is not one of the grounds that was stated in the appeal, which brings me to another point.

If you review our respondent's brief in connection with the appeal the first bases on which we ask the Court to deny the appeal is that the statute which provides for appeals from the Magistrate's Court very specifically says you must include the grounds for the appeal. You must list the grounds for the appeal in the notice of appeal. The Supreme Court ---

THE COURT: --- I don't have any problem letting you brief that but a jurisdictional issue can be raised at any point.

MR. ABNEY: Understood. My only point is I'd like the chance to address that. But as to another ground for why the appeal should be denied the Supreme Court held in the Pringle case, Pringle v Builders Transport which is cited in our briefing that where a statute, where one of the appellate statutes specifically requires you to state the grounds for appeal in the notice and you fail to do that it is as if you have filed no notice of appeal and the Court has no jurisdiction to hear the appeal.

That's a Supreme Court case very clearly on point and we've cited that in our briefing. The initial notice of appeal contained no grounds. It just says I appeal

these orders. The first amended notice of appeal no grounds. The second amended notice of appeal, no grounds. Only with the third amended notice of appeal did they ever identify any grounds for the actual appeal; none of which were the jurisdictional issue.

And in the Pringle case the Court says you cannot cure an initially defective notice of appeal by subsequently amending to state the grounds on which your appeal is based. So that is another ground on which the Court should deny the appeal in the first place. Thank you.

THE COURT: Okay. So my ruling with respect to your Motion to Dismiss 1088 [sic] is granted. I'm going to look at the attorney fees issue. I'm looking to see if I need to return any documents that y'all have handed me.

MR. ABNEY: You can keep mine ---

THE COURT: --- can I keep those?

MR. GOLDSTEIN: I don't need them back.

THE COURT: Okay. Very good. Do you want to do a proposed order ---

MR. ABNEY: --- sure ---

THE COURT: --- for me to sign with the 1008 case?

MR. ABNEY: I'll be glad to do that.

THE COURT: Mr. Abney, I appreciate that. And I

will do my best to let y'all hear from me forthwith on the other pending issue.

MR. ABNEY: And if it's okay with the Court may I have until this Friday to submit just some brief memoranda ---

THE COURT: --- sure ---

MR. ABNEY: --- on the jurisdictional issue.

THE COURT: You can file it with the Court is fine but if you will email me and copy ---

MR. ABNEY: --- I'll do it ---

THE COURT: --- Mr. Goldstein and you can send it to kcurtisj@sccourts.org

MR. ABNEY: Thank you, Your Honor.

MR. GOLDSTEIN: Thank you, Your Honor.

THE COURT: Thank you.

********END OF TRANSCRIPT OF RECORD********

C E R T I F I C A T E

I, the undersigned, Joyce C. Rueger, Official Circuit Court Reporter for the Ninth Judicial Circuit of the State of South Carolina, do hereby certify that the foregoing is a true, accurate, and complete Transcript of Record of the proceedings had and evidence introduced in the trial of the captioned case, relative to appeal, in the Court of Common Pleas for Berkeley County, South Carolina on the 3rd day of June, 2019.

I do further certify that I am neither of kin, counsel, nor interest to any party hereto.

November 19, 2019

Joyce C. Rueger, CVR-M
Court Reporter


DANGER
ASBESTOS
MAY CAUSE CANCER
CAUSES DAMAGE TO LUNGS
AUTHORIZED
PERSONNEL ONLY
WEAR
RESPIRATORY PROTECTION
AND PROTECTIVE CLOTHING
IN THIS AREA
PELIGRO
ASBESTO
PUEDE CAUSAR CANCER
CAUSA DAÑO A LOS PULMONES
PERSONAL
AUTORIZADO SOLAMENTE
USE PROTECCION RESPIRATORIA
Y ROPA DE PROTECCION
EN ESTA AREA
DANGER
ASBESTOS HAZARD


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